

The **NORTH CAROLINA REGISTER**

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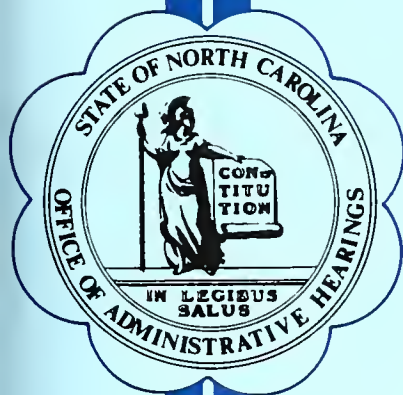
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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Publication Schedule
 (August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
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12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 176
AMENDMENT AND EXTENSION OF
EXECUTIVE ORDER 148**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Section 1. Extension

Executive Order Number 148 is reissued and extended for a period of two years, unless terminated earlier or extended by further Executive Order.

Section 2. Additional Objective

The Task Force on Health Objectives For The Year 2000 ("Task Force") shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Task Force.

Section 3. Governor's Community Task Forces

The Task Force shall have the power to designate Governor's Community Task Forces on Health Objectives for the Year 2000 ("Community Task Forces"). These Community Task Forces shall be comprised of representatives of public and private organizations which support the goals of the Task Force. The Community Task Forces shall seek to further the objectives of the Task Force and they shall exist so long as the Task Force does, unless earlier terminated.

Section 4. Effective Date

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 24th day of September, 1992.

**EXECUTIVE ORDER NUMBER 177
EXTENDING THE PROVISIONS OF
EXECUTIVE ORDER NUMBER 175**

Reference is made to Executive Order Number 175 dated August 28, 1992.

It has been determined that additional Hurricane Andrew relief efforts necessitate an extension of the temporary waiver of weight restrictions on the gross weight of trucks transporting food, supplies and equipment through North Carolina to the areas of disaster caused by Hurri-

cane Andrew and license requirements thereon.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution, **it is ordered:**

Executive Order Number 175 is hereby extended, retroactive September 28, 1992, without amendment and shall remain in effect until October 28, 1992.

Done in the Capital City of Raleigh, North Carolina, this 1st day of October, 1992.

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission (Division of Facility Services) intends to amend rules cited as 10 NCAC 3C .1902, .1927 - .1929; 3H .0108, .0711, .1108 - .1109.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 9:30 a.m. on December 4, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Actions: To make the existing brain injury rules less restrictive and thereby provide more beds for patients with brain injuries.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603, by November 16, 1992.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3C - LICENSING OF
HOSPITALS**

**SECTION .1900 - SUPPLEMENTAL RULES
FOR THE LICENSURE OF THE SKILLED;
INTERMEDIATE; DOMICILIARY BEDS IN
A HOSPITAL**

.1902 DEFINITIONS

The following definitions shall apply throughout this Section, unless text otherwise clearly indicates to the contrary:

- (1) "Accident" means something occurring by chance or without intention which has caused physical or mental harm to a patient, resident or employee.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.
- (3) "Administrator" means the person who has authority for and is responsible to the

governing board for the overall operation of a facility.

- (4) "Brain injury ~~extended long term~~ care" is defined as ~~a multi-discipline~~ an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by eternal physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functioning.
- (5) "Capacity" means the maximum number of patient or resident beds which the facility is licensed to maintain at any given time. This number shall be determined as follows:
 - (a) Bedrooms shall have minimum square footage of 100 square feet for a single bedroom and 80 square feet per patient or resident in multi-bedded rooms. This minimum square footage shall not include space in toilet rooms, washrooms, closets, vestibules, corridors, and built-in furniture.
 - (b) Dining, recreation and common use areas available shall total no less than 25 square feet per bed for skilled nursing and intermediate care beds and no less than 30 square feet per bed for domiciliary home beds. Such space must be contiguous to patient and resident bedrooms.
- (6) "Combination Facility" means any hospital with nursing home beds which is licensed to provide more than one level of care such as a combination of intermediate care and/or skilled nursing care and domiciliary home care.
- (7) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (8) "Department" means the North Carolina Department of Human Resources.
- (9) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (10) "Dispense" means preparing and packaging a prescription drug or device in a

container and labeling the container with information required by state and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".

- (11) "Drug" means substances:
 - (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - (d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph; but does not include devices or their components, parts, or accessories.
- (12) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) "Existing Facility" means a licensed facility; or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the department through the preliminary working drawings stage prior to the effective date of this Rule.
- (14) "Exit Conference" means the conference held at the end of a survey, inspection or investigation, but prior to finalizing the same, between the department's representatives who conducted the survey, inspection or investigation and the facility administration representative(s).
- (15) "Incident" means an intentional or unintentional action, occurrence or happening which is likely to cause or lead to physical or mental harm to a patient, resident or employee.
- (16) "Licensed Practical Nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.
- (17) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been

issued.

- (18) "Medication" means drug as defined in (12) of this Rule.
- (19) "New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the department subsequent to the effective date of this Rule. If determined by the department that more than one half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (20) "Nurse Aide" means any ~~unlicensed male or female person regardless of working title employed or assigned in a facility for the purpose of assisting duly licensed nurses with patient care or providing patient care under the supervision or direction of duly licensed nurses~~ individual providing nursing or nursing-related services to patients in a facility, and is not a licensed health professional, a qualified dietitian or someone who volunteers to provide such services without pay, and who is listed in a nurse aide registry approved by the Department.
- (21) "Nurse Aide Trainee" means an individual ~~in training to become a nurse aide who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.~~
- (22) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level for state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.
- (23) "Nurse in Charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.

- (24) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (25) "Patient" means any person admitted for care to a skilled nursing or intermediate care facility.
- (26) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (27) "Qualified Dietitian" means a person who meets the standards and qualification established by the Committee on Professional Registration of the American Dietetic Association.
- (28) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (29) "Resident" means any person admitted for care to a domiciliary home.
- (30) "Sitter" means an individual employed to provide companionship and social interaction to a particular resident or patient, usually on a private duty basis.
- (31) "Supervisor-in-Charge" means a duly licensed nurse to whom supervisory duties have been delegated by the Director of Nursing.
- (32) "Ventilator dependence" ~~is defined as~~ means physiological dependency by a patient on the use of a ventilator for more than eight hours a day.

Statutory Authority G.S. 131E-79.

.1927 BRAIN INJURY LONG TERM CARE PHYSICIAN SERVICES

(a) In nursing facility beds designated as brain injury ~~extended long term~~ care units, an attending physician shall be responsible for a patient's specialized ~~extended long term~~ care program. The intensity of the program requires that there shall be direct patient contact by a physician at least once a per week and more often as the patient's condition warrants. Each patient's multi-discipline, ~~extended long term~~ care program shall be developed and implemented under the supervision of a physiatrist (a physician trained in Physical Medicine and Rehabilitation) or a physician of equivalent training and experience.

(b) If a physiatrist or physician of equivalent training or experience, is not available on a weekly basis to the facility, the facility shall provide for weekly medical management of the patient, by another physician, ~~with~~ In addition, oversight for

the patient's multi-discipline ~~extended long term~~ care program shall be provided by a qualified consultant physician who visits patients monthly, makes recommendations for and approves the interdisciplinary care plan, and provides consultation as requested to the physician who is managing the patient on a weekly basis.

(c) The attending physician shall actively participate in individual case conferences or care planning sessions and shall ~~complete review~~ and sign discharge summaries and records within 15 days of patient discharge. When patients are to be discharged to either another health care facility or a residential setting the attending physician shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

Statutory Authority G.S. 131E-79.

.1928 BRAIN INJURY LONG TERM CARE PROGRAM REQUIREMENTS

(a) The general requirements in this Subchapter shall apply when applicable, but brain injury ~~extended long term~~ care units shall meet the supplement requirements in this Rule and Rules .1901 (4) and .1929 of this Section. Brain injury ~~extended long term~~ care is a multi-discipline an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process as provided in Rule .1927 of this Section and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functioning. Following are the minimum requirements for specific services that may be necessary to maintaining the individual at optimum level:

- (1) Overall supervisory responsibility for brain injury ~~extended long term~~ care services shall be assigned to a registered nurse with one year experience in caring for brain injured patients.
- (2) Physical ~~Therapy~~ therapy shall be provided by a physical therapist with a current valid North Carolina license ~~working in the brain injury unit a minimum of 20 hours per week plus an additional two hours per week for each patient in excess of ten (e.g., 20 pa-~~

tients, 40 hours per week) The assistance of a physical therapy assistant or aide shall be provided at the rate of two hours per week per active physical therapy patient on a facility wide basis with a minimum of 40 hours per week regardless of how small the census.

- (3) Occupational therapy shall be provided by an occupational therapist with a current valid North Carolina License working in the unit 20 hours per week plus an additional two hours per week for each patient in excess of ten. (e.g.: 20 patients, 40 hours per week) The assistance of an occupational therapy aide or assistant shall be provided at the rate of two hours per week per patient with a minimum of one full-time aide. The services of a physical therapist and occupational therapist shall be combined to provide one full-time equivalent for each 20 patients. The assistance of a physical therapy aide and an occupational therapy aide with appropriate supervision shall be combined to provide one full-time equivalent for each 20 patients. A proportionate number of hours shall be provided for a census less than 20 patients.

- (4) (3) Clinical nutrition services shall be provided by a qualified dietician with two years clinical training and experience in nutrition. The number of hours of clinical nutrition services on either a full-time or part-time employment or contract basis shall be adequate to meet the needs of the patients. Each patient's nutrition needs shall be reviewed at least monthly. Clinical nutrition services shall include:

- (A) Assessing the appropriateness of the ordered diet for conformance with each patient's physiological and ~~pharmacological~~ pharmacological condition;
- (B) Evaluating each patient's laboratory data in relation to nutritional status and hydration;
- (C) Applying technical knowledge of feeding tubes, pumps and equipment to each patient's specialized needs.

- (5) (4) Clinical Social Work shall be provided by a Social Worker meeting the requirements of Rule .1923 of this Section.
- (6) (5) Recreation therapy, when required,

shall be provided on either a full-time or part-time employment or contract basis by a clinician eligible for certification as a therapeutic recreation specialist by the State Board of Therapeutic Recreation Certification. The number of hours of therapeutic recreation services shall be adequate to meet the needs of the patients. In the event that a qualified specialist is not locally available, alternate treatment modalities shall be developed by the occupational therapist and reviewed by the attending physician. The program designed must be adequate to meet the needs of this specialized population and must be administered in accordance with Section .1200 of this Subchapter.

- (7) (6) Speech therapy, when required, shall be provided by a clinician with a current valid license in speech pathology issued by the State Board of Audiology and Speech Pathology.
- (8) (7) Respiratory therapy, when required, shall be provided and supervised by a respiratory therapist currently registered by the National Board for Respiratory Care.

(b) Each patient's program shall be governed by a multi-discipline treatment plan incorporating and expanding upon the health plan required under Rules .1908 and .1909 of this Section. The plan is to be initiated on the first day of admission. Upon completion of baseline data development and an integrated interdisciplinary assessment the initial treatment plan is to be expanded and finalized within 14 days of admission. Through an interdisciplinary process the treatment plan shall be reviewed at least monthly and revised as appropriate. In executing the treatment plan the interdisciplinary team shall be the major decision-making body and shall determine the goals, process, and time frames for accomplishment of each patient's program. Disciplines to be represented on the team shall be medicine, nursing, clinical pharmacy and all other disciplines directly involved in the patient's treatment or treatment plan.

(c) Each patient's overall program shall be assigned to an individually designated ~~program~~ case manager. The case manager acts as the coordinator manager for assigned patients. Any professional staff member involved in the patient's care may be assigned this responsibility for one or more patients. Professional staff may divide this responsibility for all patients on the unit in the best

manner to meet all patients' needs for a coordinated interdisciplinary approach to care. The case manager shall be responsible for:

- (1) coordinating the development, implementation and periodic review of the patient's treatment plan;
 - (2) preparing a monthly summary of the patient's progress;
 - (3) cultivating the patient's participation in the program;
 - (4) general supervision of the patient during the course of treatment;
 - (5) evaluating appropriateness of the treatment plan in relation to the attainment of stated goals; and
 - (6) assuring that discharge decisions and arrangements for post discharge follow-up are properly made.
- (d) For each 20 patients or fraction thereof dedicated treatment facilities and equipment shall be provided as follows:

- (1) ~~A speech therapy room with dimensions which equal or exceed 175 square feet and which is so designed and maintained as to permit free movement of three fully opened reclining wheelchairs. A combined therapy space equal to or exceeding 600 square feet, adequately equipped and arranged to support each of the therapies.~~
- (2) ~~Two occupational physical therapy rooms, each with dimensions which equal or exceed 600 square feet. Each room shall be equipped with three double size mat tables, one tilt table, and one set of free standing or fold-away parallel bars. Each room is to be plumbed with a sink suitable for hand washing. Each room shall open directly to a wheel chair accessible water closet.~~
- (3) (2) Access to one full reclining wheelchair per patient.
- (4) (3) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs including splints, casts, cushions, wedges, and bolsters.
- (5) (4) There shall be roll-in bath facilities with a dressing area available to all patients which shall afford maximum privacy to the patient.

Statutory Authority G.S. 131E-79.

.1929 SPECIAL NURSING REQMTS FOR BRAIN INJURY LONG TERM CARE

Direct care nursing personnel staffing ratio (NH/PD) established in Rule .1912 of this Section shall not be applied to nursing services for patients who require brain injury extended long term care, due to their more intensive maintenance and nursing needs. ~~When such services are provided the table in this Rule establishes the minimum acceptable direct care nursing staff ratios per patient (NH/P). The minimum direct care nursing staff shall be 5.5 hrs. per patient day allocated on a per shift basis as the facility chooses to appropriately meet the patient's needs.~~ It is also required that regardless of how low the patient census the direct care nursing staff shall not fall below a registered nurse and a nurse aide I at any time during a 24-hour period. ~~The minimum direct care nursing staff ratios are:~~

STAFF	1ST SHIFT	2ND SHIFT	3RD SHIFT		
SHIFT	DAILY				
POSITION	STAFF RATIOS	T	A	F	F
RATIO	STAFF RATIO	REQUIREMENT			
RN	.8 NH/P	.4 NH/P	.4 NH/P		
1.6 NH/P					
LPN	.8 NH/P	.8 NH/P	.4 NH/P		
2.0 NH/P					
NAI	.75 NH/P	.75 NH/P		4	
NH/P	1.9 NH/P				
NA (Trainee)	0	000			

Statutory Authority G.S. 131E-79.

SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

SECTION .0100 - GENERAL INFORMATION

.0108 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (2) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (3) "Administrator" means the person who

- has authority for and is responsible for the overall operation of a facility.
- (4) "Appropriate" means right for the specified use or purpose, suitable or proper when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (5) "Brain injury ~~extended long term~~ care" is defined as ~~a multi-discipline~~ an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.
- (6) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (7) "Combination facility" means a combination home as defined in G.S. 131E-101.
- (8) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (9) "Department" means the North Carolina Department of Human Resources.
- (10) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (11) "Drug" means substances:
 - (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - (d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph.
- (12) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) "Existing Facility" means a facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the preliminary working drawings state prior to the effective date of this Rule.
- (14) "Exit Conference" means the conference held at the end of a survey or investigation between the Department's representatives and the facility administration representative.
- (15) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.
- (16) "Interdisciplinary" means an integrated process involving a representative from each discipline of the health care team.
- (17) "Licensed Practical Nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.
- (18) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.
- (19) "Medication" means drug as defined in (11) of this Rule.
- (20) "New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (21) "Nurse Aide" means any individual providing nursing or nursing-related services to patients in a facility who is not a licensed health professional, a qualified dietitian or someone who volunteers to provide such services without pay, and listed in a nurse aide registry approved by the Department.
- (22) "Nurse Aide Trainee" means an individual who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for

- which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.
- (23) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.
- (24) "Nurse in Charge" means the nurse to whom duties for a specified number of patients, residents and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (25) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (26) "Operator" means the owner of the nursing home business.
- (27) "Patient" means any person admitted for nursing care.
- (28) "Person" means an individual, trust, estate, partnership or corporation including associations, joint-stock companies and insurance companies.
- (29) "Proposal" means a Negative Action Proposal containing documentation of findings that may ultimately be classified as violations and penalized accordingly.
- (30) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.
- (31) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (32) "Qualified Dietitian" means a person who meets the standards and qualification established by the Commission on Dietetic Registration of the American Dietetic Association.
- (33) "Qualified Activities Director" means a person who has the authority and responsibility for the direction of all therapeutic activities in the nursing facility and who meets the qualifications set forth under 10 NCAC 3H .1204.
- (34) "Qualified Pharmacist" means a person who is licensed to practice pharmacy in North Carolina and who meets the qualifications set forth under 10 NCAC 3H .0903.
- (35) "Qualified Social Services Director" means a person who has the authority and responsibility for the provision of social services in the nursing home and who meets the qualifications set forth under 10 NCAC 3H .1306.
- (36) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (37) "Resident" means any person admitted for care to a domiciliary home part of a combination home as defined in G.S. 131E-101.
- (38) "Sitter" means an individual employed to provide companionship and social interaction to a particular patient, usually on a private duty basis.
- (39) "Supervisor-in-Charge (domiciliary home)" means any employee to whom supervisory duties for the domiciliary home portion of a combination home have been delegated by either the Administrator or Director of Nursing.
- (40) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.
- (41) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (42) "Violation" means a finding which directly relates to a patient's health, safety or welfare or which creates a substantial risk that death or serious physical harm will occur and is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State and federal laws, rules and regulations.

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

SECTION .0700 - PHYSICIAN SERVICES

.0711 BRAIN INJURY LONG TERM CARE PHYSICIAN SERVICES

(a) In nursing facilities with facility beds designated as brain injury extended long term care units, ~~the an~~ attending physician shall be responsible for a patient's specialized care and rehabilitation program ~~shall have specialized training in rehabilitation~~. The intensity of the program requires that there shall be direct patient contact by a physician at least once per week and more often as the patient's condition warrants. Each patient's multi-discipline rehabilitation program shall be developed and implemented under the supervision of ~~the attending physician a~~ physiatrist (a physician trained in Physical Medicine and Rehabilitation) or a physician of equivalent training and experience.

(b) If a physiatrist or physician of equivalent training or experience is not available on a weekly basis to the facility, the facility shall provide for weekly medical management of the patient by another physician. In addition, oversight for the patient's multi-discipline, long term care program shall be provided by a qualified consultant physician who visits patients monthly, makes recommendations for and approves the interdisciplinary care plan, and provides consultation as requested to the physician who is managing the patient on a weekly basis.

(c) The attending physician shall actively participate in individual case conferences or care planning sessions and shall complete review and sign discharge summaries and records within 15 days of a patient discharge. When patients are to be discharged to either another health care facility or a residential setting, the attending physician shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

Statutory Authority G.S. 131E-104.

SECTION .1100 - SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES

.1108 BRAIN INJURY LONG TERM CARE

(a) The general requirements in this Subchapter shall apply when applicable, but brain injury extended long term care units shall meet the supplement requirements in Rules .1108 and .1109 of this Section. Brain injury extended long term care is ~~a multi-discipline an~~ interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a prima-

ry course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process as provided in Rule .0711 of this subchapter and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functioning. Following are the minimum requirements for specific services that may be necessary to maintaining the individual at optimum level:

- (1) Overall supervisory responsibility for brain injury extended long term care services shall be assigned to a registered nurse with one year experience in caring for brain injured patients.
- (2) Physical Therapy shall be provided by a physical therapist with a current valid North Carolina license working in the brain injury unit a minimum of 20 hours per week plus an additional two hours per week for each patient in excess of ten. (e.g.: 20 patients' 40 hours per week). The assistance of a physical therapy assistant or aide shall be provided at the rate of two hours per week per active physical therapy patient on a facility wide basis with a minimum of 40 hours per week regardless of how small the census.
- (3) Occupational therapy shall be provided by an occupational therapist with a current valid North Carolina License working in the unit 20 hours per week plus an additional two hours per week for each patient in excess of ten. (e.g.: 20 patients' 40 hours per week). The assistance of an occupational therapy aide or assistant shall be provided at the rate of two hours per week per patient with a minimum of one full-time aide. The services of a physical therapist and occupational therapist shall be combined to provide one full-time equivalent position for each 20 patients. The assistance of a physical therapy aide and occupational therapy aide, with appropriate supervision, shall be combined to provide one full-time equivalent position for each 20 patients. A proportionate number of hours shall be provided for a census less than 20 patients.
- (4) (3) Clinical nutrition services shall be

provided by a qualified dietician with two years clinical training and experience in nutrition. The number of hours of clinical nutrition services on either a full time or part time employment or contract basis shall be adequate to meet the needs of the patients. Each patient's nutrition needs shall be reviewed at least monthly. Clinical nutrition services shall include:

- (A) Assessing the appropriateness of the ordered diet for conformance with each patient's physiological and pharmacological condition.
- (B) Evaluating each patient's laboratory data in relation to nutritional status and hydration.
- (C) Applying technical knowledge of feeding tubes, pumps and equipment to each patient's specialized needs.
- (5) (4) Clinical Social Work shall be provided by a Social Worker meeting the requirements of Rule .1306 of this Subchapter.
- (6) (5) Recreation therapy, when required, shall be provided on either a full-time or part-time employment or contract basis by a clinician eligible for certification as a therapeutic recreation specialist by the State Board of Therapeutic Recreation Certification. The number of hours of therapeutic recreation services shall be adequate to meet the needs of the patients. In event that a qualified specialist is not locally available, alternate treatment modalities shall be developed by the occupational therapist and reviewed by the attending physician. The program designed must be adequate to meet the needs of this specialized population and must be administered in accordance with Section .1200 of this Subchapter.
- (7) (6) Speech therapy, when required, shall be provided by a clinician with a current valid license in speech pathology issued by the State Board of Audiology and Speech pathology.
- (8) (7) Respiratory therapy, when required, shall be provided by an individual meeting the same qualifications for providing respiratory therapy under Rule .1107 of this Section.

(b) Each patient's program shall be governed by a multi-discipline treatment plan incorporating and

expanding upon the health plan required under Section .0400 of this Subchapter. The plan is to be initiated on the first day of admission. Upon completion of baseline data development and an integrated interdisciplinary assessment the initial treatment plan is to be expanded and finalized within 14 days of admission. Through an interdisciplinary process the treatment plan shall be reviewed at least monthly and revised as appropriate. In executing the treatment plan the interdisciplinary team shall be the major decision making body and shall determine the goals, process, and time frames for accomplishment of each patient's program. Disciplines to be represented on the team shall be medicine, nursing, clinical pharmacy and all other disciplines directly involved in the patient's treatment or treatment plan.

(c) Each patient's overall program shall be assigned to an individually designated program case manager. The case manager acts as the coordinator for assigned patients. Any professional staff member involved in a patient's care may be assigned this responsibility for one or more patients. Professional staff may divide this responsibility for all patients on the unit in the best manner to meet all patients' needs for a coordinated, interdisciplinary approach to care. The case manager shall be responsible for:

- (1) coordinating the development, implementation and periodic review of the patient's treatment plan;
- (2) preparing a monthly summary of the patient's progress;
- (3) cultivating the patient's participation in the program;
- (4) general supervision of the patient during the course of treatment;
- (5) evaluating appropriateness of the treatment plan in relation to the attainment of stated goals; and
- (6) assuring that discharge decisions and arrangements for post discharge follow-up are properly made.

(d) For each 20 patients or fraction thereof, dedicated treatment facilities and equipment shall be provided as follows:

- (1) ~~A speech therapy room with dimensions which equal or exceed 175 square feet and which is so designed and maintained as to permit free movement of three fully opened reclining wheel chairs.~~ A combined therapy space equal to or exceeding 600 square feet, adequately equipped and arranged to support each of the therapies;

- (2) ~~Two occupational/physical therapy rooms, each with dimensions which equal or exceed 600 square feet. Each room shall be equipped with three double size mat tables, one tilt table, and one set of free standing or fold-away parallel bars. Each room is to be plumbed with a sink suitable for hand washing. Each room shall open directly to a wheelchair accessible water closet.~~
- (3) (2) Access to one full reclining wheelchair per patient.
- (4) (3) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs including splints, casts, cushions, wedges, and bolsters.
- (5) (4) There shall be roll-in bath facilities with a dressing area available to all patients which shall afford maximum privacy to the patient.

Statutory Authority G.S. 131E-104.

.1109 SPECIAL NURSING REQMTS FOR BRAIN INJURY LONG TERM CARE

Direct care nursing personnel staffing ratios established in Section .0500 of this Subchapter shall not be applied to nursing services for patients who require brain injury extended long term care, due to their more intensive maintenance and nursing needs. ~~When such services are provided, the table in this Rule establishes the minimum acceptable direct care nursing staff ratios per patient. The minimum direct care nursing staff shall be 5.5 hours per patient day, allocated on a per shift basis as the facility chooses, to appropriately meet the patients' needs.~~ It is also required that regardless of how low the patient census, the direct care nursing staff shall not fall below a registered nurse and a nurse aide 1 at any time during a 24-hour period. ~~The minimum direct care nursing staff ratios are:~~

STAFF	1ST SHIFT	2ND
SHIFT	3RD SHIFT	DAILY
POSITION	STAFF RATIO	STAFF
RATIO	STAFF RATIO	
REQUIRE-		MENT

RN	.8 NH/P	4
NH/P	.4 NH/P	1 . 6

NH/P		
LPN	.8 NH/P	8
NH/P	.4 NH/P	2 . 0
NH/P		
NAI	.75 NH/P	7 . 5
NH/P	.4 NH/P	1 . 9
NH/P		
NA (Trainee)	0	000

Statutory Authority G.S. 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission (Division of Facility Services) intends to amend rules cited as 10 NCAC 3H .0108, .0311, .0313 - .0314, .0316 and .0505 and adopt rules cited as 10 NCAC 3C .2001 - .2008; 3H .1130 - .1136.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 9:30 a.m. on December 4, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Actions: To establish HIV rules for hospitals and nursing homes which develop HIV specialty units or facilities.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603, by November 16, 1992.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3C - LICENSING OF HOSPITALS

SECTION .2000 - SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES

.2001 ADMISSIONS TO THE HIV DESIGNATED UNIT

- (a) No patient shall be discriminated against in admission practices based on the diagnosis of Human Immunodeficiency Virus disease.
- (b) If a facility declines admission to a patient

known to have Human Immunodeficiency Virus disease, the reasons for the denial shall be documented.

Statutory Authority G.S. 131E-79.

.2002 DISCHARGE OF PATIENTS FROM THE HIV DESIGNATED UNIT

A record shall be maintained of all discharges of patients indicating the reasons for discharge, the physician's order for or other authorization for discharge, and the condition of the patient at the time of discharge.

A patient known to have Human Immunodeficiency Virus disease may not be discharged solely on the basis of the diagnosis of Human Immunodeficiency Virus disease except as authorized by the provisions of N.C. General Statute 131E-117 (15) or other provisions of the N.C. General Statutes or regulations promulgated thereunder or provisions of applicable federal laws and regulations.

Statutory Authority G.S. 131E-79.

.2003 HIV DESIGNATED UNIT POLICIES AND PROCEDURES

(a) In units dedicated to the treatment of patients with Human Immunodeficiency Virus disease, policies and procedures specific to the specialized needs of the patients served shall be developed. At a minimum they shall include staff training and education, and the availability of consultation by a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.

(b) Policies and procedures for infection control shall be in conformance with 29 CFR 1910 Occupational Safety and Health Standards which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service which is incorporated by reference including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 for

\$15.95.

Statutory Authority G.S. 131E-79.

.2004 PHYSICIAN SERVICES IN A HIV DESIGNATED UNIT

In facilities with a Human Immunodeficiency Virus designated unit the facility shall insure that attending physicians have documented, pre-arranged access, either in person or by telephone, to a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus Disease.

Statutory Authority G.S. 131E-79.

.2005 SPECIAL NURSING REQUIREMENTS FOR A HIV DESIGNATED UNIT

(a) Facilities with a Human Immunodeficiency Virus designated unit shall have a registered nurse with specialized education or knowledge in the care of Human Immunodeficiency Virus disease.

(b) Nursing personnel assigned to the Human Immunodeficiency Virus unit shall be regularly assigned to the unit. Rotations are acceptable to alleviate staff burnout or staffing emergencies.

Statutory Authority G.S. 131E-79.

.2006 SPECIALIZED STAFF EDUCATION FOR THE HIV DESIGNATED UNIT

For facilities with a Human Immunodeficiency Virus designated unit an organized, documented program of education specific to the care of patients infected with the Human Immunodeficiency Virus shall be provided and include at a minimum:

- (1) Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome disease processes;
- (2) transmission modes, causes, and prevention of Human Immunodeficiency Virus;
- (3) treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;
- (4) psycho-socio-economic needs of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome patients;
- (5) in addition to the general hospital orientation to Occupational Safety and Health Administration guidelines for universal precautions, orientation to infection control specific to Human Immunodeficiency Virus disease must be provided

upon employment or permanent assignment to the unit; Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 783-3238;

- (6) policies and procedures specific to the Human Immunodeficiency Virus designated unit; and
- (7) annual continuing education in infection control.

Statutory Authority G.S. 131E-79.

.2007 USE OF INVESTIGATIONAL DRUGS ON THE HIV DESIGNATED UNIT

(a) The supervision and monitoring for the administration of investigational drugs is the responsibility of the pharmacist and a licensed registered nurse, acting pursuant to the orders of a physician duly authorized to prescribe or dispense such drugs. Responsibilities shall include, but not be limited to, the following:

- (1) to insure the provision of written guidelines for any investigational drug or study are provided; and
- (2) training and determination of staff's abilities regarding administration of drugs, policies and procedures and regulations.

(b) The pharmacist or physician dispensing the investigational drug is to provide the facility with information regarding at least the following:

- (1) a copy of the protocol, including drug information;
- (2) a copy of the patient's informed consent;
- (3) drug storage;
- (4) handling;
- (5) any specific preparation and administration instructions;
- (6) specific details for drug accountability, resupply and return of unused drug; and
- (7) a copy of the signed consent to participate in the study.

(c) Labeling of investigational drugs shall be in accordance with written guidelines of protocol and State and federal requirements regarding such drugs. Prescription labels for investigational drugs are to be distinguishable from other labels by an appropriate legend, "Investigational Drug" or "For Investigational Use Only".

Statutory Authority G.S. 131E-79.

.2008 SOCIAL WORK SERVICES IN A HIV DESIGNATED UNIT

The facility shall provide either by direct employment or by contract for social work services to include assistance to the patient in identification of supportive resources, financial services and assistance with discharge and transfer arrangements. In addition, for patients in a Human Immunodeficiency Virus disease designated unit, the social worker shall provide or arrange for the provision of spiritual, pastoral and grief counseling for patients and staff where appropriate. Support services shall be provided to patient families and significant others. Where necessary, coordination with treatment services for substance abuse, legal services and other community resources shall be identified.

Statutory Authority G.S. 131E-79.

SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

SECTION .0100 - GENERAL INFORMATION

.0108 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (2) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (3) "Administrator" means the person who has authority for and is responsible for the overall operation of a facility.
- (4) "Appropriate" means right for the specified use or purpose, suitable or proper when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (5) "Brain injury extended care" is defined as a multi-discipline maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or prog-

- ress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.
- (6) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (7) "Combination facility" means a combination home as defined in G.S. 131E-101.
- (8) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (9) "Department" means the North Carolina Department of Human Resources.
- (10) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (11) "Drug" means substances:
- recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph.
- (12) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) "Existing Facility" means a facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the preliminary working drawings state prior to the effective date of this Rule.
- (14) "Exit Conference" means the conference held at the end of a survey or investigation between the Department's representatives and the facility administration representative.
- (15) "HIV Unit" means designated areas dedicated to patients or residents known to have Human Immunodeficiency Virus disease.
- (16) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.
- (17) "Interdisciplinary" means an integrated process involving a representative from each discipline of the health care team.
- (18) "Licensed Practical Nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.
- (19) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.
- (20) "Medication" means drug as defined in (11) of this Rule.
- (21) "New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (22) "Nurse Aide" means any individual providing nursing or nursing-related services to patients in a facility who is not a licensed health professional, a qualified dietitian or someone who volunteers to provide such services without pay, and listed in a nurse aide registry approved by the Department.
- (23) "Nurse Aide Trainee" means an individual who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.
- (24) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities.

It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.

- (24) (25) "Nurse in Charge" means the nurse to whom duties for a specified number of patients, residents and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (25) (26) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (26) (27) "Operator" means the owner of the nursing home business.
- (27) (28) "Patient" means any person admitted for nursing care.
- (28) (29) "Person" means an individual, trust, estate, partnership or corporation including associations, joint-stock companies and insurance companies.
- (29) (30) "Proposal" means a Negative Action Proposal containing documentation of findings that may ultimately be classified as violations and penalized accordingly.
- (30) (31) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.
- (31) (32) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (32) (33) "Qualified Dietitian" means a person who meets the standards and qualification established by the Commission on Dietetic Registration of the American Dietetic Association.
- (33) (34) "Qualified Activities Director" means a person who has the authority and responsibility for the direction of all therapeutic activities in the nursing facility and who meets the qualifications set forth under 10 NCAC 3H .1204.
- (34) (35) "Qualified Pharmacist" means a person who is licensed to practice pharmacy in North Carolina and who meets the qualifications set forth under 10 NCAC 3H .0903.
- (35) (36) "Qualified Social Services Director" means a person who has the authority and responsibility for the provision of social services in the nursing home and who

meets the qualifications set forth under 10 NCAC 3H .1306.

- (36) (37) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (37) (38) "Resident" means any person admitted for care to a domiciliary home part of a combination home as defined in G.S. 131E-101.
- (38) (39) "Sitter" means an individual employed to provide companionship and social interaction to a particular patient, usually on a private duty basis.
- (39) (40) "Supervisor-in-Charge (domiciliary home)" means any employee to whom supervisory duties for the domiciliary home portion of a combination home have been delegated by either the Administrator or Director of Nursing.
- (40) (41) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.
- (41) (42) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (42) (43) "Violation" means a finding which directly relates to a patient's health, safety or welfare or which creates a substantial risk that death or serious physical harm will occur and is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State and federal laws, rules and regulations.

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

SECTION .0300 - GENERAL STANDARDS OF ADMINISTRATION

.0311 ADMISSIONS

(a) No patient shall be admitted except under the orders of a duly licensed physician.

(b) The Administrator shall assure tuberculosis and other communicable disease screening on admission and tuberculosis screening annually thereafter until final discharge. Identification of a communicable disease does not, in all cases, in and of itself, preclude admission to the facility.

The facility shall provide appropriate care and treatment.

(c) The facility shall acquire prior to or at the time of admission orders from the attending physician for the immediate care of the patient or resident.

(d) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnosis, rehabilitation potential, a summary of the hospital stay if the patient is being transferred from a hospital, and orders for the ongoing care of the patient.

(e) If a patient is admitted from somewhere other than a hospital, a physical examination shall be performed either within 5 days prior to admission or within 48 hours following admission.

(f) New facilities must prepare a plan of admission which, at a minimum, assures available staff time and plans for individual patient assessment, initiation of health care or nursing care plans, and implementation of physician and nursing treatment plans. This plan must be available for inspection during the initial licensure survey prior to issuance of a license.

(g) Only persons who are 18 years of age or older shall be admitted to the domiciliary home portion of a combination facility.

Statutory Authority G.S. 131E-104.

.0313 DISCHARGE OF PATIENTS

A record shall be maintained of all discharges of patients indicating the reasons for discharge, the physician's order for or other authorization for discharge, and the condition of the patient at the time of discharge.

A patient known to have Human Immunodeficiency Virus disease may not be discharged solely on the basis of the diagnosis of Human Immunodeficiency Virus disease except as authorized by the provisions of N.C. General Statute 131E-117 (15) or other provisions of the N.C. General Statutes or regulations promulgated thereunder or provisions of applicable federal laws and regulations.

Statutory Authority G.S. 131E-104.

.0314 POLICIES AND PROCEDURES

The facility Administrator shall assure written policies and procedures which are available to and implemented by staff. These policies and procedures shall cover at least the following areas:

- (1) admissions;
- (2) dietary;
- (3) discharges with physician orders and/or

patients or residents leaving against physician advice;

- (4) gratuities and solicitation which at a minimum shall provide that no owner, operator, agent or employee of a facility nor any member of his family shall accept a gratuity directly or indirectly from any patient or resident in the facility or solicit for any type of contribution;
- (5) housekeeping;
- (6) infection control which must include, but is not limited to, requirements for sterile and aseptic and isolation techniques; universal and isolation precautions and communicable disease screening including ~~at a minimum~~ annual tuberculosis screening for all staff and inpatients of the facility;
- (7) maintenance of patient medical or health care records including charting or record keeping;
- (8) orientation of all facility personnel;
- (9) patient or resident care plans, treatment and other health care or nursing care, including but not limited to all policies and procedures required by rules contained in this Subchapter;
- (10) patients' or residents' rights;
- (11) physical evaluation for residents and patients at least annually;
- (12) physician services and utilization of the individual's private physician;
- (13) procurement of supplies and equipment to meet individual patient care needs;
- (14) protection of patients from abuse and neglect;
- (15) range of services provided;
- (16) recording and reporting to the Department of accidents or incidents occurring to patients in any part of the facility and maintenance of such reports or records;
- (17) rehabilitation services;
- (18) release of medical record information;
- (19) screening and reporting communicable disease to the Department (Division of Health Services) and local health Department;
- (20) transfers.

Statutory Authority G.S. 131E-104.

.0316 SAFETY AND ENVIRONMENTAL CONTROL

(a) A licensed facility shall have policies and procedures for patient safety and for environmental

control which at a minimum shall include infection control.

(b) A facility with a licensed capacity of 51 beds or more shall have a safety and environmental control committee which includes representation from administration; medical and nursing staff; pharmacy; maintenance, engineering or housekeeping; and dietary services.

(c) A facility with a licensed capacity of 50 beds or less shall have a safety and environmental control committee which at a minimum includes the Administrator and Director of Nursing.

(d) All committee members shall be designated in writing.

(e) Responsibilities and duties of any safety and environmental committee shall include, but not be limited to, the following:

- (1) meet at least quarterly, maintain minutes insufficient detail to document committee proceedings and actions, and submit reports to the Administrator;
- (2) establish an incident and accident reporting system in accordance with facility policies which includes a mechanism for reviewing, investigating and evaluating all incidents and accidents reported. The committee shall document all reviews and action(s) taken;
- (3) conduct hazard surveillance program;
- (4) conduct fire protection program which includes:
 - (A) development and adoption of a comprehensive fire and disaster plan;
 - (B) instruction and fire drills for all employees in the following:
 - (i) use of all alarms and signals;
 - (ii) methods of fire containment;
 - (iii) location and use of fire fighting equipment;
 - (iv) where, when and how to shut off oxygen and air conditioning;
 - (v) evacuation routes and procedures; and
 - (vi) transmission of an alarm to the fire Department or other responsible emergency services;
 - (C) assignment of specific responsibilities and tasks to all personnel in response to an alarm; and a fire drill for each shift of employees at least quarterly;
- (5) conduct water temperature surveillance program which assures compliance with Rule .1807(d) of this Subchapter;
- (6) annually review policies and procedures for infection and communicable disease

control;

- (A) handling food;
 - (B) processing laundry;
 - (C) disposing of environmental or other wastes and patient or resident surgical or wound dressings, personal care pads or other wastes;
 - (D) controlling pests and reporting infections and diseases;
- (7) monitor overall environmental/infection control and implementation of safety policies and procedures; ~~and~~
 - (8) monitor staff development to assure active ongoing inservice training at least annually which shall include universal precautions and in other areas of safety and environmental/infection control for all personnel; and
 - (9) acting on requirements or recommendations from Occupational Safety and Health Administration inspectors.

Statutory Authority G.S. 131E-104.

SECTION .0500 - NURSING SERVICES

.0505 NURSING/HEALTH CARE ADMINISTRATION AND SUPERVISION

(a) A licensed facility shall have a Director of Nursing service who shall be responsible for the overall organization and management of all nursing services and shall be currently licensed to practice as a registered nurse by the North Carolina Board of Nursing in accordance with G.S. 90, Article 9A.

(b) The Director of Nursing shall not serve as Administrator or Assistant Administrator.

(c) A licensed facility, with nursing facilities or combination facilities shall provide a full-time Director of Nursing on duty at least eight hours per day, five days a week. A registered nurse shall relieve the Director of Nursing (be in charge of nursing) during the Director's absence.

(d) A licensed facility shall employ and assign registered nurse, licensed practical nurses and nurse aides for duties in accordance with G.S. 90, Article 9A.

(e) The Director of Nursing shall cause the following to be accomplished:

- (1) establishment and implementation of nursing policies and procedures which shall include but not be limited to the following:
 - (A) assessment of the planning for

- patients' nursing care or health care needs, and implementation of nursing/health care plans;
- (B) daily charting of any unusual occurrences of acute episodes related to patient care, and progress notes written monthly reporting each patient's performance in accordance with identified goals and objectives and each patient's progress toward rehabilitative nursing goals;
 - (C) assurance of the delivery of nursing services in accordance with physicians' orders, nursing care plans and the facility's policies and procedures;
 - (D) notification of emergency physicians or on-call physicians;
 - (E) infection control to prevent cross-infection among patients and staff shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 or may be purchased with a credit card by telephone to the Government Printing Office at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service which is incorporated by reference including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 for \$15.95.
 - (F) reporting of deaths;
 - (G) emergency reporting of fire, patient or staff accidents or incidents, or other emergency situations;
 - (H) use of protective devices or restraints to assure that each patient or resident is restrained in accordance with physician orders and the facility's policies, and that the restrained patient or resident is appropriately evaluated and released at a minimum of every 2 hours;
 - (I) special skin care and decubiti care;
 - (J) bowel and bladder training;
 - (K) maintenance of proper body alignment and restorative nursing care;
 - (L) supervision of and assisting patients with feeding;
 - (M) intake and output observation and reporting for those patients whose condition warrants monitoring of their fluid balance. This will include those patients on intravenous fluids or tube feedings, and patients with kidney failure and temperatures elevated to 102 degrees F. or above;
 - (N) catheter care; and
 - (O) procedures used in caring for patients in the facility.
- (2) development of written job descriptions for nursing personnel;
 - (3) periodic assessment of the nursing department with identification of personnel requirements as they relate to patient care needs and reporting same to the Administrator;
 - (4) a planned orientation and continuing inservice education program for nursing employees and documentation of staff attendance and subject matter covered during inservice education programs;
 - (5) obtaining and provision of appropriate reference materials for the nursing Department, which include a Physician's Desk Reference or comparable drug reference, policy and procedure manual, and medical dictionary for each nursing station; and
 - (6) establishment of operational procedures to assure that appropriate supplies and equipment are available to nursing staff as determined by individual patient care needs.
- Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).*

**SECTION .1100 - SPECIALIZED
REHABILITATIVE AND HABILITATIVE
SERVICES**

**.1130 ADMISSIONS TO THE HIV
DESIGNATED UNIT**

- (a) No patient shall be discriminated against in

admission practices based on the diagnosis of Human Immunodeficiency Virus disease.

(b) If a facility declines admission to a patient known to have Human Immunodeficiency Virus disease, the reasons for the denial shall be documented.

Statutory Authority G.S. 131E-104.

.1131 HIV DESIGNATED UNIT POLICIES AND PROCEDURES

(a) In addition to .0314, in units dedicated to the treatment of patients with Human Immunodeficiency Virus disease, policies and procedures specific to the specialized needs of the patients served shall be developed. At a minimum they shall include staff training and education, and the availability of consultation by a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.

(b) Policies and procedures for infection control shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 or may be purchased with a credit card by telephone to the Government Printing Office at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service which is incorporated by reference including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 for \$15.95.

Statutory Authority G. S. 131E-104.

.1132 PHYSICIAN SERVICES IN A HIV DESIGNATED UNIT

In facilities with a Human Immunodeficiency Virus designated unit, the facility shall insure that attending physicians have documented, pre-arranged access in person or by telephone to a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus Disease.

Statutory Authority G.S. 131E-104.

.1133 SPECIAL NURSING REQUIREMENTS FOR A HIV DESIGNATED UNIT

(a) Facilities with a Human Immunodeficiency Virus designated unit shall have a registered nurse with specialized education or knowledge in the care of Human Immunodeficiency Virus disease.

(b) Nursing personnel assigned to the Human Immunodeficiency Virus unit shall be regularly assigned to the unit. Rotations are acceptable to alleviate staff burnout or staffing emergencies.

Statutory Authority G.S. 131E-104.

.1134 SPECIALIZED STAFF EDUCATION FOR HIV DESIGNATED UNITS

For facilities with a Human Immunodeficiency Virus designated unit, an organized, documented program of education specific to the care of patients infected with the Human Immunodeficiency Virus shall be provided and include at a minimum:

- (1) Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome disease processes;
- (2) transmission modes, causes, and prevention of Human Immunodeficiency Virus;
- (3) treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;
- (4) psycho-socio-economic needs of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome patients;
- (5) universal precautions and infection control; and
- (6) policies and procedures specific to the Human Immunodeficiency Virus designated unit.

Statutory Authority G. S. 131E-104.

.1135 USE OF INVESTIGATIONAL DRUGS FOR HIV DESIGNATED UNITS

(a) The supervision and monitoring for the administration of investigational drugs is the responsibility of the pharmacist and a licensed registered nurse, acting pursuant to the orders of a physician duly authorized to prescribe or dispense such drugs. Responsibilities shall include, but not be limited to, the following:

- (1) insuring the provision of written guidelines for any investigational drug or study are provided; and

- (2) training and determination of staff's abilities regarding administration of drugs, policies, procedures and regulations.

(b) The pharmacist or physician dispensing the investigational drug is to provide the facility with information regarding at least the following:

- (1) a copy of the protocol, including drug information;
- (2) a copy of the patient's informed consent;
- (3) drug storage;
- (4) handling;
- (5) any specific preparation and administration instructions;
- (6) specific details for drug accountability, resupply and return of unused drug; and
- (7) a copy of the signed consent to participate in the study.

(c) Labeling of investigational drugs shall be in accordance with written guidelines of protocol and State and federal requirements regarding such drugs. Prescription labels for investigational drugs are to be distinguishable from other labels by an appropriate legend, "Investigational Drug" or "For Investigational Use Only".

Statutory Authority G.S. 131E-104.

.1136 ADDITIONAL SOCIAL WORK REQUIREMENTS FOR HIV DESIGNATED UNITS

In addition to the social work services specified in .1307, in facilities with a Human Immunodeficiency Virus disease designated unit, the social worker shall provide or arrange for the provision of spiritual, pastoral and grief counseling and bereavement services for patients and staff where appropriate. Support services shall be provided to resident families and significant others. Where necessary, coordination with treatment services for substance abuse, legal services and other community resources shall be identified.

Statutory Authority G.S. 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rule cited as 10 NCAC 3R .2801.

The proposed effective date of this action is

January 4, 1993.

The public hearing will be conducted at 2:00 p.m. on November 18, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: To expand the definition of rehabilitation beds to include nursing homes.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, NC 27603, by November 16, 1992.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .2800 - CRITERIA AND STANDARDS FOR REHABILITATION SERVICES

.2801 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section.

- (1) "Rehabilitation Facility" means a facility as defined in G.S. 131E-176.
- (2) "Rehabilitation" means the process to maintain, restore or increase the function of disabled individuals so that an individual can live in the least restrictive environment, consistent with his or her objective.
- (3) "Outpatient Rehabilitation Clinic" is defined as a program of coordinated and integrated outpatient services, evaluation, or treatment with emphasis on improving the functional level of the person in coordination with the patient's family.
- (4) "Rehabilitation Beds" means inpatient beds in a facility or a unit of a facility licensed pursuant to 10 NCAC 3C .0201- or 10 NCAC 3H .0200.
- (5) "Traumatic Brain Injury" is defined as an insult to the brain that may produce a diminished or altered state of consciousness which results in impairment of cognitive abilities or physical functioning. It can also result in the disturbance of behavioral or emotional functioning.

These impairments may be either temporary or permanent and cause partial or total functional disability or psychological maladjustment.

- (6) "Stroke" (cerebral infarction, hemorrhage) is defined as the sudden onset of a focal neurologic deficit due to a local disturbance in the blood supply to the brain.
- (7) "Spinal Cord Injury" is defined as an injury to the spinal cord that results in the loss of motor or sensory function.
- (8) "Pediatric Rehabilitation" is defined as inpatient rehabilitation services provided to persons 14 years of age or younger.

Statutory Authority G.S. 131E-177; 131E-183(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .3032, .3050 and amend rules cited as 10 NCAC 3R .3001, .3020, .3030, .3040.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at 2:00 p.m. on October 30, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: To establish rules for the 1993 State Medical Facilities Plan.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603, by November 16, 1992.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3001 CERTIFICATE OF NEED REVIEW CATEGORIES

The agency has established nine categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency will may require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The nine categories of facilities and services are:

- (1) Category A. Includes proposals for acute health service facilities including but not limited to the following types of projects: renovation, construction, major medical equipment, technology and other ancillary and support equipment and services, except those proposals included in Categories B through I.
- (2) Category B. Includes proposals for long-term nursing facility beds which are reviewed against the State Medical Facilities Plan.
- (4) Category D. Includes proposals for new or expanded end-stage renal disease treatment facilities; and relocations of existing dialysis stations to another county.
- (5) Category E. Includes proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities.
- (6) Category F. Includes proposals for new or expanded ambulatory surgical facilities.
- (7) Category G. Includes proposals involving cost overruns; ~~addition of one dialysis station for isolation of patients; expansions of existing continuing care or life care facilities which are applying under exemptions from need projections in the Plan determinations in 10 NCAC 3R .3030; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds; with the exception of relocating dialysis stations; reallocation of beds or stations; due to withdrawals or relinquishments of certificates of need; hospital proposals to convert acute care~~

~~beds to short-term nursing; proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through F, Category H, or Category I.~~

- (8) ~~Category H. Includes proposals for demonstration projects identified in this Plan; special allocation of ICF/MR beds for Thomas S. class members only.~~ Includes proposals for new continuing care or life care facilities applying for exemption under 10 NCAC 3R .3050(b)(2) and new home health agencies or offices.
- (9) ~~Category I. Includes proposals for new continuing care or life care facilities and new home health agencies or offices.~~ Includes proposals for converting hospital beds to nursing care under 10 NCAC 3R .3050(b)(1).

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1992:

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Alleghany	I	February 1, 1992
Cleveland	I	February 1, 199
Polk	I	February 1, 1992
Burke	I	August 1, 1992
Jackson	I	August 1, 1992
Alamance	H	February 1, 1992
Caswell	H	February 1, 1992
Rockingham	H	February 1, 1992
Davie	H	August 1, 1992
Yadkin	H	August 1, 1992
Mecklenburg	HH	March 1, 1992
Stanly	HH	September 1, 1992

Chatham	IV	March 1, 1992
Person	IV	March 1, 1992 <u>1993</u>
Wake	IV	September 1, 1992
Warren	IV	September 1, 1992
Cumberland	V	April 1, 1992
Moore	V	April 1, 1992
Robeson	V	April 1, 1992
Seotland	V	April 1, 1992
Bladen	V	October 1, 1992
New Hanover	V	October 1, 1992
Beaufort	VI	April 1, 1992
Nash	VI	April 1, 1992
Northampton	VI	April 1, 1992
Craven	VI	October 1, 1992
Hertford	VI	October 1, 1992 <u>April 1, 1993</u>
Pamlico	VI	October 1, 1992
Wilson	VI	October 1, 1992
Macon	I	<u>August 1, 1993</u>
Mitchell	I	<u>August 1, 1993</u>
Johnston	IV	<u>March 1, 1993</u>
Harnett	V	<u>October 1, 1993</u>
Wayne	VI	<u>April 1, 1993</u>
Duplin	VI	<u>October 1, 1993</u>
Washington	VI	<u>October 1, 1993</u>
Wilkes	I	<u>February 1, 1993</u>

(2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

County	HSA	CON Beginning Review Date
Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain	I	December 1, 1992
Transylvania, Henderson	I	December 1, 1992
Caldwell, Burke, Alexander, McDowell	I	December 1, 1992

Rutherford, Polk	I	June 1, 1992
Cleveland	I	June 1, 1992
Mecklenburg	III	May 1, 1992 <u>1993</u>
Surry, Yadkin	H	June 1, 1992
Forsyth, Stokes	H	June 1, 1992
Alamance, Caswell	H	November 1, 1992
Orange, Person, Chatham	IV	May 1, 1992
Vance, Granville, Franklin, Warren	IV	November 1, 1992
Davidson	H	November 1, 1992
Cumberland	V	December 1, 1992
Johnston	IV	May 1, 1992
Wake	IV	November 1, 1992
Randolph	H	November 1, 1992
New Hanover, Brunswick, Pender	V	December 1, 1992
Onslow	VI	June 1, 1992
Wilson, Greene	VI	June 1, 1992
Edgecombe, Nash	VI	June 1, 1992
Hertford, Bertie, Gates, Northampton	VI	December 1, 1992
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	December 1, 1992
<u>Buncombe, Madison, Mitchell, Yancey</u>	<u>I</u>	<u>June 1, 1993</u>
<u>Moore, Hoke, Richmond, Montgomery, Anson</u>	<u>V</u>	<u>June 1, 1993</u>
<u>Craven, Jones, Pamlico, Carteret</u>	<u>VI</u>	<u>June 1, 1993</u>
<u>Pitt</u>	<u>VI</u>	<u>June 1, 1993</u>
<u>Beaufort, Washington, Tyrrell, Hyde, Martin</u>	<u>VI</u>	<u>December 1, 1993</u>

- (3) Category D. Subcategory End Stage Renal Disease ~~Treatment Facilities~~, Dialysis Stations. Dialysis station review shall be conducted under the provisions of NCAC 3R .3032.

Counties	HSA	CON Beginning Review Date
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	April 1, 1992
Buncombe, Haywood, Madison, Mitchell, Yancey	I	October 1, 1992

PROPOSED RULES

Henderson, Polk, Transylvania	I	October 1, 1992
Ashe, Avery, Caldwell, Watauga, Wilkes	I	April 1, 1992
Burke, McDowell	I	October 1, 1992
Rutherford	I	April 1, 1992
Alexander, Catawba	I	October 1, 1992
Alleghany, Stokes, Surry	H	October 1, 1992
Davidson	H	October 1, 1992
Caswell, Rockingham	H	October 1, 1992
Randolph	H	April 1, 1992
Alamance	H	April 1, 1992
Gaston	HH	May 1, 1992
Lincoln	HH	May 1, 1992
Rowan	HH	October 1, 1992
Cabarrus	HH	October 1, 1992
Montgomery, Stanly	HH	October 1, 1992
Chatham, Lee	IV	October 1, 1992
Person	IV	May 1, 1992
Wake	IV	October 1, 1992
Johnston	IV	October 1, 1992
Franklin, Vance, Warren	IV	May 1, 1992
Anson	V	August 1, 1992
Cumberland, Hoke	V	April 1, 1992
Harnett	V	April 1, 1992
Sampson	V	April 1, 1992
Bladen	V	August 1, 1992
Robeson	V	August 1, 1992
Pender	V	August 1, 1992
Brunswick	V	August 1, 1992
Duplin	VI	April 1, 1992
Wayne	VI	April 1, 1992

Edgecombe, Nash	VI	April 1, 1992
Gates, Halifax, Hertford, Northampton	VI	August 1, 1992
Bertie, Washington	VI	August 1, 1992
Martin	VI	April 1, 1992
Greene, Pitt	VI	August 1, 1992
Beaufort	VI	August 1, 1992
Carteret, Craven, Jones, Pamlico	VI	August 1, 1992
Onslow	VI	August 1, 1992

- (4) Category I. Subcategory Home Health Agencies.

County	HSA	CON Beginning Review Date
Mecklenburg	III	February 1, 1992
Randolph	H	April 1, 1992
Wilkes	I	April 1, 1992
Davidson	II	April 1, 1993
Forsyth	II	April 1, 1993
Guilford	II	October 1, 1993
Dare	VI	February 1, 1993

- (5) All categories for which review dates are not specified in Subparagraph (1), (2), (3), (4) of this Rule.

REVIEW PERIOD	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1	--	--	--	--	--	--
February 1	B, G, <u>I</u>	B, G, <u>I</u>	A, G, E, <u>H, I</u>	A, G, E, <u>H, I</u>	A, G, E, <u>H, I</u>	A, G, E, <u>H, I</u>
March 1	--	--	B, G	B, G	--	--
April 1	A, D, G, E, <u>H, I</u>	A, D, G, E, <u>H, I</u>	--	--	B, G, D	B, G, D
May 1	--	--	C, G, F, D	C, G, F, D	--	--

June 1	A, C, G, F, <u>D</u>	A, C, G, F, <u>D</u>	<u>D</u>	<u>D</u>	A, C, G, F, <u>D</u>	A, C, G, F, <u>D</u>
July 1	--	--	A, G, I, <u>H</u>	A, G, I, <u>H</u>	--	--
August 1	B, G	B, G	--	--	~~D~~ , G, E, I, <u>H</u>	~~D~~ , G, E, I, <u>H</u>
September 1	--	--	B, G, E	B, G, E	--	--
October 1	~~D~~ , G, E, H, <u>I</u>	~~D~~ , G, E, H, <u>I</u>	~~H~~ , <u>D</u>	~~H~~ , <u>D</u>	B, G, <u>H</u>	B, G, <u>H</u>
November 1	--	A, C, G, F	A, C, G, F	A, C, G, F	--	--
December 1	A, C, <u>D</u> , G, F	<u>D</u>	<u>D</u>	<u>D</u>	A, C, <u>D</u> , G, F	A, C, <u>D</u> , G, F

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3030 FACILITY AND SERVICE NEED DETERMINATIONS

Facility and services ~~allocations~~ need determinations are shown in Items (1) - (8) of this Rule. The allocations are subject to reductions based on certificates of need awarded since ~~November 15, 1991~~, after September 17, 1992:

(1) Category A. Acute Health Service Facilities.

Morehead Memorial Hospital Service System	HSA II	16 beds
Halifax Memorial Hospital Service System	HSA VI	17 beds
UNC Hospital Service System	HSA IV	15 beds (University students)
C. J. Harris Community Hospital System	HSA I	15 beds

(2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds ~~Allocated~~ <u>Needed</u>
Alleghany	I	20
Cleveland	I	60
Polk	I	40
Burke	I	60
Jackson	I	20
Alamance	H	60
Caswell	H	20
Rockingham	H	80
Davie	H	90
Yadkin	H	60

Mecklenburg	III	100
Stanly	III	60
Chatham	IV	60
Person	IV	20 <u>30</u>
Wake	IV	70
Warren	IV	20
Cumberland	V	90
Moore	V	60
Robeson	V	4
Scotland	V	20
Bladen	V	40
New Hanover	V	100
Beaufort	VI	40
Nash	VI	60
Northampton	VI	20
Craven	VI	60
Hertford	VI	20
Pamlico	VI	20
Wilson	VI	60
Macon	I	<u>30</u>
Mitchell	I	<u>20</u>
Johnston	IV	<u>50</u>
Harnett	V	<u>90</u>
Duplin	VI	<u>30</u>
Washington	VI	<u>10</u>
Wayne	VI	<u>50</u>
Wilkes	I	<u>70</u>

(3) Category C.

- (a) Psychiatric Facility Beds. It is determined that there is no need for additional beds and no reviews are scheduled.

Counties	HSA	B — E — D — S
		— Adult ————— Child/Adolescent

PROPOSED RULES

Caldwell, Burke, Alexander, McDowell	I	—	12
Gaston, Lincoln	III	11	—
Rowan, Iredell, Davie	III	19	—
Stanly, Cabarrus, Union	III	26	10
Surry, Yadkin	H	23	—
Rockingham	H	16	—
Vance, Granville, Franklin, Warren	IV	13	—
Davidson	H	10	—
Lee, Harnett	V	15	—
Wake	IV	34	—
Craven, Jones, Pamlico, Carteret	VI	14	—
Lenoir	VI	10	—
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	17	—

(b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Allocation Need Determination	
		Child	Adult
Jackson, Haywood, Macon, Cherokee, —Clay, Graham, Swain	I	12	
Transylvania, Henderson	I	12	
Caldwell, Burke, Alexander, McDowell	I	6	
Rutherford, Polk	I	6	
Cleveland	I	18	
Mecklenburg	III	6	48 24
Surry, Yadkin	H	12	
Forsyth, Stokes	H	12	
Alamance, Caswell	H	18	
Orange, Person, Chatham	IV	12	
Vance, Granville, Franklin, Warren	IV	6	
Davidson	H	6	

Cumberland	V	18
Johnston	IV	6
Wake	IV	42
Randolph	H	12
New Hanover, Brunswick, Pender	V	6
Onslow	VI	18
Wilson, Greene	VI	6
Edgecombe, Nash	VI	6
Hertford, Bertie, Gates, Northampton	VI	6
Pasquotank, Chowan, Perquimans, —Camden, Dare, Currituck	VI	6
Buncombe, Madison, Mitchell, Yancey	I	<u>6</u> <u>6</u>
Moore, Hoke, Richmond, Montgomery, Anson	V	<u>18</u> <u>0</u>
Craven, Jones, Pamlico, Carteret	VI	<u>6</u> <u>0</u>
Pitt	VI	<u>6</u> <u>0</u>
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	<u>6</u> <u>18</u>

- (c) Substance Abuse and Chemical Dependency Facility Beds. No allocation. It is determined that there is no need for additional beds and no reviews are scheduled.
- (4) Category D. End Stage Renal Disease Treatment Facilities. Need for end-stage renal dialysis facilities or stations is determined as is provided in 10 NCAC 3R .3032.

Counties	HSA	Station Allocations If All Pending Are Approved
Cherokee, Clay, Graham, Jackson, —Macon, Swain	I	~~4~~
Buncombe, Haywood, Madison, —Mitchell, Yancey	I	~~13~~
Henderson, Polk, Transylvania	I	3
Ashe, Avery, Caldwell, Watauga, —Wilkes	I	6
Burke, McDowell	I	2
Rutherford	I	7
Alexander, Catawba	I	4
Alleghany, Stokes, Surry	H	0

PROPOSED RULES

Davidson	H	2
Caswell, Rockingham	H	7
Randolph	H	3
Alamance	H	6
Gaston	HH	6
Lincoln	HH	7
Rowan	HH	4
Cabarrus	HH	5
Montgomery, Stanly	HH	5
Chatham, Lee	IV	6
Person	IV	8
Wake	IV	12
Johnston	IV	7
Franklin, Vance, Warren	IV	10
Anson	V	3
Cumberland, Hoke	V	17
Harnett	V	3
Sampson	V	4
Bladen	V	7
Robeson	V	1
Pender	V	0
Brunswick	V	10
Duplin	VI	3
Wayne	VI	4
Edgecombe, Nash	VI	14
Gates, Halifax, Hertford, Northampton	VI	19
Bertie, Washington	VI	0
Martin	VI	8
Greene, Pitt	VI	3
Beaufort	VI	0
Carteret, Craven, Jones, Pamlico	VI	13
Onslow	VI	6

(5) Category E. Inpatient Rehabilitation Facility Beds.

PROPOSED RULES

<u>HSA</u>	<u>Beds</u>
I	<u>20 0</u>
II	<u>4 0</u>
III	<u>20</u>
IV	<u>45 0</u>
V	<u>22 21</u>
VI	<u>35 29</u>

- (6) Category F. Ambulatory Surgery Facilities. It is determined that there is no need for additional facilities and no reviews are scheduled.

Any area's need is determined by applying the following formula:

$$\frac{1990 \text{ Amb. Surg. Cases in } \underline{\text{the Proposed Amb. Surg. Area}}}{\text{Area Population (1000's)}} \times \frac{1994 \text{ Pop. of Area to be Served}}{1000} = \frac{\text{Proposed Amb. Surg. Cases in Proposed Service Area}}{1000}$$

$$\frac{\text{Projected Ambulatory Surgical Cases in Proposed Service Area}}{600 \text{ (cases per room per year)}} \div .80 = \frac{\text{Ambulatory Surgery Rooms Needed in Proposed Service Area}}{1}$$

This methodology is not applicable to CON ambulatory surgical applications which conform to 10-NCAC 3R .2115(c)(2) relative to access to medically underserved persons.

(7) Category H:

(a) Brain Injury Demonstration Long Term Nursing Facility Beds:

- (i) HSA I and III 20 beds
 (ii) HSA II, IV and V, 20 beds
 (less Bladen, Brunswick, Columbus,
 New Hanover, Pender and Sampson counties.)
 (iii) HSA VI 20 beds
 (plus Bladen, Brunswick, Columbus,
 New Hanover, Pender and Sampson counties.)

(b) Demonstration Project, Medically Complex Children Long Term Nursing Beds:

- All HSAs 10 beds

(c) Thomas S. class Intermediate Care Facility beds for Mentally Retarded:

- All HSAs 71 beds

(8) (7)Category I. New Home Health Agencies.

County	HSA	Number of Agencies Allocated or Offices Needed
Mecklenburg	III	4
Randolph	H	2
Wilkes	I	4
Davidson	II	1
Forsyth	II	2
Guilford	II	2

Dare	VI	1
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- (8) Open heart surgery operating rooms - It is determined that there is no need for additional rooms and no reviews are scheduled.
- (9) Solid organ transplant and allogeneic bone marrow transplant programs - It is determined that these programs are needed only in academic medical center teaching hospitals as defined under 10 NCAC 3R .3050(a)(3).
- (10) Gamma knife - It is determined that there is no need for gamma knife stereotactic radiosurgery services in any facility and no reviews are scheduled.
- (11) Positron Emission Tomography - It is determined that there is no need for additional cyclotron-based positron emission tomography capacity in any facility and no reviews are scheduled.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3032 DIALYSIS STATION NEED DETERMINATION

(a) The Medical Facilities Planning Section (MFPS) shall determine need for dialysis stations and facilities two times each calendar year, and shall make a report of such determinations available to all who request it. This report shall be called the MFPS Semiannual Dialysis Report (SDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc.
- (2) Certificate of need decisions, decisions appealed, appeals settled and awards, from the Certificate of Need Section, DFS.
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS.
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan, as provided in G.S. 131E-183.

(b) Need for dialysis stations and facilities shall be determined as follows:

(1) County Need

- (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1988 to the end of 1992 is multiplied by the county's 1992 year end total number of patients in the MFPS Semiannual Dialysis Report (SDR), and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total 1993 patients.
- (B) The percent of each county's total patients who were home dialysis patients at the end of 1992 is multiplied by the county's projected total 1993 patients, and the product is subtracted from the county's projected total 1993 patients. The remainder is the county's projected 1993 in-center dialysis patients.
- (C) The projected number of each county's 1993 in-center patients is divided by 3.2. The dividend is the projection of the county's 1993 in-center dialysis stations.
- (D) From each county's projected number of 1993 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans for which CON decisions have not been made. The remainder is the county's 1993 station need projection.
- (E) If a county's 1993 station need projection is seven or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the 1993 station need determination is the same as the 1993 station need projection.
- (2) Facility Need. A dialysis facility located in a county whose unmet need in the reference Semiannual Dialysis Report (SDR) is less than 7 stations is determined to need additional stations to the extent that:
 - (A) Its utilization, reported in the SDR, is greater than 3.2 patients per station.
 - (B) Such need, calculated as follows, is reported in an application for a certificate of need:

- (i) The facility's number of in-center patients on December 31, 1991 is subtracted from the number of such patients on December 31, 1992 and the remainder is divided by the number of in-center patients on December 31, 1991.
- (ii) The dividend from (2)(B)(i) is divided by 12.
- (iii) The dividend from (2)(B)(ii) is multiplied by the number of months from the most recent month reported in the SDR until the end of calendar 1993.
- (iv) The product from (2)(B)(iii) is multiplied by the number of the facility's in-center patients reported in the SDR and that product is added to such reported number of in-center patients.
- (v) The sum from (2)(B)(iv) is divided by 3.2, and from the dividend is subtracted the facility's current number of certified and pending stations as recorded in the SDR. The remainder is the number of stations needed.

(C) The facility may apply to expand to meet the need established in (2)(B)(v), up to a maximum of seven stations.

The schedule for publication of the Medical Facilities Planning Section's Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications based on each issue of this report in 1993 shall be as follows:

<u>Data for</u> <u>Period Ending</u>	<u>Receipt of</u> <u>SEKC Report</u>	<u>Publication</u> <u>of SDR</u>	<u>Receipt of</u> <u>CON Applications</u>	<u>Beginning</u> <u>Review Dates</u>
<u>Dec. 31, 1992</u>	<u>Feb. 28, 1993</u>	<u>March 19, 1993</u>	<u>May 14, 1993</u>	<u>June 1, 1993</u>
<u>June 30, 1993</u>	<u>Aug. 31, 1993</u>	<u>Sept. 20, 1993</u>	<u>Nov. 15, 1993</u>	<u>Dec. 1, 1993</u>

An application for a certificate of need pursuant to this Rule shall be accepted only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3040 REALLOCATIONS, ADJUSTMENTS, AND REVIEW PERIODS

(a) ~~Reallocations resulting from withdrawals, relinquishments, or no applications.~~

(1) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision has been appealed shall not be reallocated until the appeal is resolved.

(A) Appeals Resolved Prior to September 17: If an appeal is resolved in the calendar year prior to September 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next amendment to NCAC 3R .3030

(B) Appeals Resolved On Or After September 17: If the appeal is resolved on or after September 17 in the calendar year, the beds or services shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be given by the Certificate of Need Section no less than 45 days prior to the due date for receipt of new applications.

Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report. allocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated. Beds or services which are reallocated once in accordance with this policy shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.

(+) (2) Withdrawals and Relinquishments. An allocation A need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, and an allocation for which no certificate of need application is received, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which the holder of a certificate of need could have appealed a an appeal of the notice of intent to withdraw his the certificate could be filed if he does not in fact if no appeal is filed,

- (B) the date on which an appeal of the withdrawal is finally resolved against the holder, or
- (C) the date that the Certificate of Need Section receives notice from the holder of the certificate of need notice that the certificate has been voluntarily relinquished, or,
- ~~(D) for allocations for which no application was received, the last due date on which applications could have been received.~~

Notice of the ~~reallocation and the~~ scheduled review period for which applications shall be submitted will the reallocated services or beds shall be given no less than 45 days prior to the due date for ~~receipt~~ submittal of the new applications.

- ~~(2) Reallocation of service capacity represented by a relinquished or withdrawn certificate of need or by an allocation for which no application was received will occur only to the extent of the need indicated for the same service contained in this section in effect at the time of such determination, as adjusted through the provisions of .3040(b). The effective date of the determination of the availability of capacity for reallocation is the date designated in (a) (1) (A), (B), (C) or (D) of this Rule.~~

- ~~(3) Reallocations made available through this Rule for which no application is received for the review period designated in Subparagraph (a)(1) of this Rule will not be reallocated again.~~

~~(b) Need adjustments for prior year certificate of need awards. Need determinations in this section are based on an inventory of facilities that existed and of certificates of need awarded prior to preparation of this Rule and will be adjusted by the amount of any subsequent certificate of need awards. A record of capacity remaining available for allocation will be maintained by the Medical Facilities Planning Section, based upon information supplied by the Certificate of Need Section. For information about the availability of these allocations write Medical Facilities Planning Section, Division of Facility Services, P. O. Box 29530, Raleigh, NC 27626-0530, or call 919-733-4130.~~

~~(c) Availability of Allocations. Single month review specific allocations specified in 10 NCAC 3R.3030(2), (3) ii, (4), and (10) are available only for the review cycles specified in 10 NCAC 3R.3020(1) (2) (3) and (4) and in the next occurring scheduled certificate of need review cycle applicable to the same facility service category for the health service area in which the county or counties are located, as specified in 10 NCAC 3R.3020(5). Allocations which are not single month review specific are available only for the certificate of need review cycles specified in 10 NCAC 3R.3020(5).~~

(3) Need Determinations for which No Applications are Received

- (A) Services or Beds with Scheduled Review Before September 17: Need determinations, or portions of such need, for services or beds in this category include long-term nursing care beds, home health agencies or offices, dialysis stations, and beds in intermediate care facilities for the mentally retarded (ICF/MR) with the exception of ICF/MR allocations with a scheduled review that begins after September 17. The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual amendment to 10 NCAC 3R .3030.

- (B) Services or Beds with Two Scheduled Review Periods and ICF/MR Fall Review. Need determinations for services or beds in this category include acute care beds, rehabilitation beds, ambulatory surgery operating rooms, medical technology, psychiatric beds, substance abuse beds, and ICF/MR beds for which review commences after September 17. A need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category G review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be given by the Certificate of Need Section no less than 45 days prior to the due date for submittal of new applications.

(4) Need Determinations not Awarded because Application Disapproved.

- (A) Disapproval prior to September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before September 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual amendment to 10 NCAC 3R .3030 if no appeal is filed.

- (B) Disapproval on or After September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after

September 17, shall be reallocated by the Certificate of Need Section. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed no less than 80 days prior to the due date for submittal of the new applications.

(b) CHANGES IN NEED DETERMINATIONS. Need determinations in 10 NCAC 3R .3030 and .3032 shall be revised after the effective date of this Rule as necessary to reflect:

- (1) dialysis stations decertified after September 17, 1992
- (2) health service facilities or beds delicensed after September 17, 1992
- (3) psychiatric beds licensed pursuant to G.S. 131E-184(c),
- (4) errors in inventories on which need determinations in 10 NCAC 3R .3030 are based.

(c) REVIEW PERIODS. Determinations of need for nursing facility beds, home health agencies or offices, ICF/MR beds are available to be applied for only once during the calendar year. The review cycles for these allocations are specified in 10 NCAC 3R .3020 (1)-(4). All other allocations are available for the certificate of need review cycles specified in 10 NCAC 3R .3020 (5).

Statutory Authority: G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3050 NEED DETERMINATION PRINCIPLES

(a) ACUTE CARE FACILITIES AND SERVICES

- (1) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .1510 - Bed Capacity.
- (2) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered to be more cost-efficient than new construction, unless shown otherwise. Utilization targets are shown in 10 NCAC 3R .3050(a)(4).
- (3) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .3030. The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
 - (A) Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.
 - (B) Houses extensive basic medical science and clinical research programs, patients and equipment.
 - (C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

Exemption from the provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

- (i) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
 - (ii) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
 - (iii) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.
- (4) Reconversion to Acute Care. Facilities redistributing beds from acute care bed capacity to rehabilitation or psychiatric use shall obtain a certificate of need to convert this capacity back to acute care. Application for such reconversion to acute care of beds converted to psychiatry or rehabilitation shall be evaluated against the hospital's utilization in relation to target occupancies used in determining need shown in 10 NCAC 3R .3030 without regard to the acute care bed need shown in the Rule. These target occupancies are:

<u>Licensed Bed Capacity</u>	<u>Percent Occupancy</u>
<u>1 - 49</u>	<u>65</u>

<u>50 - 99</u>	<u>70</u>
<u>100 - 199</u>	<u>75</u>
<u>200 - 699</u>	<u>80</u>
<u>700 +</u>	<u>81.5</u>

- (5) Multi-Specialty Ambulatory Surgery. After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to multi-specialty facilities over single specialty facilities in areas where need is demonstrated in 10 NCAC 3R .3030. A multi-specialty ambulatory surgical facility means a facility providing services in at least three of the following areas: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedics and oral surgery. A new multi-specialty ambulatory surgical facility shall have a minimum of two operating rooms, and no fewer than two operating rooms with general anesthesia capabilities.
- (6) Expansion of the Rehabilitation System. After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing establishment of small inpatient rehabilitation programs so as to make these services available to the underserved populations.
- (7) Geographic Distribution of Inpatient Rehabilitation Beds. After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to proposals that minimize the distance that patients must travel to obtain inpatient rehabilitation services.
- (8) Ambulatory Surgery Need Determination Exclusion. The determination of need for ambulatory surgical operating rooms defined in NCAC 3R .3030(6) shall not be considered in the review of an application for a certificate of need to convert existing operating rooms to a freestanding ambulatory surgical facility, if submitted by a hospital designated as a Rural Primary Care Hospital by the N. C. Office of Rural Health Services pursuant to section 1820(f) of the Social Security Act.
- (b) LONG-TERM CARE FACILITIES AND SERVICES.
- (1) Provision of Hospital-Based Long-Term Nursing Care. A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and other relevant rules, to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .3030 if the hospital:
- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 1993; and
- (B) on January 1, 1993, had a licensed acute care bed capacity of 150 beds or less. The certificate of need shall remain in force as long as the Department of Human Resources determines that the hospital is meeting the conditions outlined in this Rule. "Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Determination of the patient's need for hospital-based long-term nursing care shall be made in accordance with existing criteria and procedures for determining need for long-term nursing care administered by the Division of Medical Assistance and the Medicare program. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities. For purposes of this Rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 3R .3050(a)(4), without regard to the acute care bed need shown in 10 NCAC 3R .3030. A certificate of need issued for

a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (i) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (ii) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;
- (iii) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need. Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (I) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 3R .3030; or
- (II) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (III) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Rural Primary Care Hospitals pursuant to section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E 175-190, may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 3R .3030 and this Rule.

Beds certified as a "distinct part" under this Rule shall be noted as such in 10 NCAC 3R .3000 and shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the February 1 review cycle. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 3R .3030. Continuation of this Rule shall be reviewed and approved by the Department of Human Resources annually. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1986 Plan are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. The Department of Human Resources shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

- (2) Plan Exemption for Continuing Care Facilities. Qualified continuing care facilities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .3030. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

- (A) Will only be developed concurrently with, or subsequent to construction on the same site, of facilities for both of the following levels of care:

- (i) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms within a suitable structure;
- (ii) domiciliary care (home for the aged) beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.

- (B) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and regulations) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party

to the continuing care contract. Financial consideration paid by persons purchasing a continuing care contract shall be equitable between persons entering at the "independent living" and "domiciliary" levels of care.

- (C) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
- (D) Will not be certified for participation in the Medicaid program. One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1985 SMFP are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983, or Chapter 445, Session Laws 1985 shall not be amended except by law.
- (3) Development of Home Health Services. After applying other required criteria, when superiority among two or more competing home health agency or office certificate of need applications is uncertain, favorable consideration shall be given to proposals which:
 - (A) provide an expanded scope of services (including nursing, physical therapy, speech therapy, and home health aide service);
 - (B) provide the widest range of treatments within a given service; and
 - (C) have the ability to offer services on a seven days per week basis as required to meet patient needs.
- (4) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of home health services; and
 - (A) the agency is the only home health agency with an office physically located in the county; and
 - (B) the agency is not being lawfully transferred to another entity; need for a new home health agency or office in the county is thereby established through this Rule.

Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one home health agency or office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

- (5) Availability of Dialysis Care. After applying other required criteria, when superiority among two or more competing dialysis facility or station certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing to provide or arrange for:
 - (A) home training and backup for patients suitable for home dialysis in the ESRD dialysis facility or in a facility that is a reasonable distance from the patient's residence;
 - (B) ESRD dialysis service availability at times that do not interfere with ESRD patients' work schedules;
 - (C) services in rural, remote areas.
- (6) Need for an Additional Home Health Agency Office Within an Existing Home Health Service Area. When an existing home health agency is serving 150 home health patients or more on an annual basis (as documented on the agency's 1993 license renewal application) in a county in its authorized service area as defined in 10 NCAC 3R. 0320 in which the agency has no home health office, the agency shall be allowed to apply for a CON to open a home health agency office within that county. Such application must document to the satisfaction of the Certificate of Need Section that the additional home health agency office will provide improved client service at a lower cost. The additional home health agency office shall only be allowed to provide services within the agency's authorized service area. No applications shall be received under this provision for additional home health agency offices in counties outside of a home health agency's authorized service area or for any county within the service area where the agency already has one or more home health agency offices or where the agency is not serving at least 150 home health patients on an annual basis. This Rule shall allow no expansion of home health services outside of the agency's service area as defined by 10 NCAC 3R .0320.

(c) MENTAL HEALTH FACILITIES AND SERVICES.

- (1) Appropriate Provision of Care. Hospitalization shall be considered the most restrictive form of therapeutic intervention or treatment and shall be used only when this level of 24-hour care and supervision is required to meet the patient's health care needs.
- (2) Linkages Between Treatment Settings. Anyone applying for a certificate of need for psychiatric, ICF/MR or substance abuse beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services, relative to their endorsement of the project and involvement in the development of a client admission and discharge agreement.
- (3) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. The process of transferring beds shall not result in a net change in the number of psychiatric beds available, but rather in the location of beds counted in the existing inventory. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Human Resources, and the person submitting the proposal.
- (4) Inpatient Psychiatric Services for Children and Adolescents. Inpatient psychiatric treatment of children and adolescents which is more extensive than stabilization shall occur in units which are separate and distinct from both adult psychiatric units and general pediatric units. In order to maximize efficiency and ensure the availability of a continuum of care, psychiatric beds for children and adolescents shall be developed in conjunction with outpatient treatment programs.
- (5) Adjustment to Psychiatric Bed Allocations. The Medical Facilities Planning Section shall reduce any psychiatric bed need determinations for any affected planning area by the number of beds permitted by the provisions of G.S. 131E-184(c) contracted subsequent to the preparation of any need determination shown in 10 NCAC 3R .3030 and prior to the beginning of the review period for which an application is submitted.
- (6) Involuntarily Committed Patients. All certificate of need applications for psychiatric beds shall indicate the proponents' willingness to be designated to serve involuntarily committed patients.
- (7) Substance Abuse Programs to Treat Adolescents. Adolescents shall receive substance abuse treatment services that are distinct from services provided to adults.
- (8) Determination of Intermediate Care Bed Need for Mentally Retarded/Developmentally Disabled Persons. After applying other required criteria, when superiority among two or more competing ICF/MR certificate of need applications is uncertain, favorable consideration shall be given to counties that do not have ICF/MR group homes when such counties are part of a multi-county area for which a need is shown in 10 NCAC 3R .3030.
- (9) Transfer of Beds from State Mental Retardation Centers. Facilities proposing to transfer ICF/MR beds from State mental retardation centers to communities shall demonstrate that they are committed to serving the same type of residents normally served in the State mental retardation centers. To ensure that relocated beds will serve those persons, any certificate of need application for beds allocated under the above policy must meet the requirements of Chapter 858 of the 1983 Session Laws. The application for transferred beds shall include a written agreement by the applicant with the following representatives which outlines the operational aspects of the bed transfers: Director of the Area MH/DD/SAS Program serving the county where the program is to be located; the Director of the applicable State Mental Retardation Center; the Chief of Developmental Disability Services in the DMH/DD/SAS; and the Secretary of the Department of Human Resources.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 26B .0110; 26C .0005; 26H .0102 - .0103, .0106, .0303, .0401; and adopt rules cited as 10 NCAC 26H .0404; 26N .0101 - .0107, .0201 - .0206, .0301 - .0303.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at 1:30 p.m. on November 2, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 26B .0110 - To provide ambulance transportation in circumstances where it is medically necessary.

10 NCAC 26C .0005 - Amend rules to clarify that all Medicaid covered services must be medically necessary.

10 NCAC 26H .0102 - To provide for retroactive rate adjustments under specified conditions; to clarify rate-setting methodology for ventilator dependent and head injured nursing facility patients; and to provide for religious diets in Medicaid rates.

10 NCAC 26H .0103 - To delete unnecessary phrases related to hair care in nursing facilities.

10 NCAC 26H .0106 - To clarify that cost reports used in reconsideration reviews must be for a specific cost reporting period.

10 NCAC 26H .0303 - To allow start-up costs to be amortized over 36 months, to include capital cost and lease expense limitations and the setting of the initial rate. It is estimated that the proposed change will decrease Medicaid expenditures in future fiscal years. The agency is proposing this amendment in order to limit capital cost recovery to a reasonable level and to discourage undercapitalized providers from entering the program.

10 NCAC 26H .0401 - This amendment will allow reimbursement to physicians based on the North Carolina Medicaid Fee Schedule.

10 NCAC 26H .0404 - Addresses physician fee schedule for practitioners other than Chiropractors, Optometrists, and Podiatrists. Fee schedule is based on the RBRVS fee schedule.

10 NCAC 26N .0101 - .0107, .0201 - .0206, .0301 - .0303 - Omnibus Budget Reconciliation Act of 1990 (OBRA 90) which changed Social Security Act 1927(g) and G.S. 108A-68 which mandates DUR by January 1, 1993.

Comment Procedures: Written comments concerning these amendments and adoptions must be submitted by November 17, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0110 AMBULANCE SERVICES

Reimbursement for ambulance services shall be made only for transportation to the nearest facility (hospital, nursing home, or intermediate care facility), or for transportation to a physician's office in an emergency when the physician's treatment is necessary to stabilize a patient enroute to the nearest appropriate facility. Services provided by an ambulance provider under the Medicaid program must be provided in accordance with the provisions of Attachment 3.1-A.1, item number 23a of the North Carolina State Plan for Medical Assistance as approved by the Health Care Financing Administration, which is adopted by reference, including any subsequent amendments. (Copies of Attachment 3.1-A may be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) a copy.)

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.170.

SUBCHAPTER 26C - AMOUNT: DURATION: AND SCOPE OF ASSISTANCE

.0005 MEDICAL SERVICES

~~All medical services performed must be medically necessary and may not be experimental in nature. Medical necessity is determined by generally accepted North Carolina community practice standards as verified by independent Medicaid consultants. All covered services must meet the test of medical necessity as defined by the state agency using specific criteria, if established, and in accordance with generally accepted North Carolina community practice standards as verified by independent Medicaid consultants. A verification of medical necessity for all services may be made by the state agency or its designee. A determination that medical necessity has not been met may result in a recoupment of payment or, if payment has not been made, a denial of payment.~~

Authority G.S. 108A-25(b); 42 C.F.R. 440.230(d).

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care is determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient will be classified in one of the two categories depending on the services needed. Rates are derived from either filed, desk, or field audited cost reports for a base year period to be selected by the state. Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports are filed and audited under provisions set forth in Rule .0104 of this Section. The criteria for determining the classification of each patient are presented in Appendix 1 of Attachment 3.1-A of the state plan. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

(1) The direct rate is based on the Medicaid cost per day incurred in the follow-

ing cost centers:

- (A) Nursing,
- (B) Dietary or Food Service,
- (C) Laundry and Linen,
- (D) Housekeeping,
- (E) Patient Activities,
- (F) Social Services,
- (G) Ancillary Services (includes several cost centers).

(2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day is increased by adjustment factors for price changes as set forth in Rule .0102(c).

(A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(B) A standard per diem amount will be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount is based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.

(3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate will be assigned as determined in Rule .0102(d) of this Section for the new type of care.

(4) The direct maximum rates are developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. The per

diem cost at the 80th percentile in each array is selected as the base for the maximum rate. The base cost in each array is adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care and weighting each by total patient days.

(5) Effective October 1, 1990, the direct rates will be adjusted as follows:

(A) A standard per diem amount will be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
- (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
- (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) A standard amount will be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff

divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases would be equal to the exact additional amount required to meet the licensed nursing requirements.

(C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which will reflect each facility's actual cost of complying with all OBRA '87 requirements.

(6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein are repaid to the State. This will be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments are not reimbursable.

(7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:

- (A) Administrative and General,
- (B) Operation of Plant and Maintenance,
- (C) Property Ownership and Use,
- (D) Mortgage Interest.

(8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.

(9) Effective for dates of service beginning October 1, 1985 and annually thereafter

per diem indirect rates will be computed as follows:

- (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] will be the base rate.
 - (B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.
 - (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.
- (10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount is based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.
- (11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and will be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate will be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), are adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors are computed using aggregate base year costs in the following manner:

- (1) Costs will be separated into direct and indirect cost categories.
- (2) Costs in each category will be accumu-

lated into the following groups:

- (A) labor,
 - (B) other,
 - (C) fixed.
- (3) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).
- (4) Price adjustment factors for each cost group will be established as follows:
- (A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs is based on the projected average hourly wage of N.C. service workers.
 - (B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
 - (C) Fixed. No adjustment will be made for this category, thus making the factor zero.
 - (D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.
 - (E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.
 - (F) However, for the rate period beginning October 1, 1991 through September 30, 1992 the forecast of the N.C. Service Wages percent applied to the 1991-92 Inpatient Hospital and Intermediate Care Facility for the Mentally Retarded rates is applied to the Labor component weight computed in (c)(4)(A) of this Rule.
 - (G) For the rate period beginning October 1, 1991 through September 30, 1992 the direct adjustment factor deter-

mined under (c)(4) of this Rule will be applied to the direct rate adjustments determined under (b)(2), (b)(5)(A) and (b)(5)(B) of this Rule.

(d) The skilled and intermediate direct patient care rates for new facilities are established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Specialized Service Rates:

(1) Head Injury Intensive Rehabilitation Services.

- (A) ~~(H)~~ A single all-inclusive prospective ~~per diem~~ rate combining both the direct and indirect cost components can be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured ~~or ventilator dependent~~ patients as specified by criteria in Appendix 3 to Attachment 3.1-A of the State Plan, which is adopted by reference, including subsequent amendments and additions. (Copies of Appendix 3 to Attachment 3.1-A of the State Plan can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) a copy.) The rate may exceed the maximum rate applicable to other Nursing Facility services. ~~For head injury services, a~~ A facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF). ~~For ventilator services, the only facilities that are eligible for a~~

~~combined single rate are small free-standing facilities with less than 21 Nursing Facility beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities are reimbursed at higher direct rates as described in Rule .0102(b)(2)(A) of this Section.~~

- (B) (2) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.

- (C) (3) Cost reports for ~~these services~~ this service must be filed in accordance with the rules in Rule .0104 of this Section, but there will be no cost settlements for any differences between ~~costs~~ cost and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider will not be eligible to receive separate payments for return on equity as defined in Rule .0105 of this Section.

(2) Ventilator Services.

- (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients are reimbursed at higher direct rates as described in Paragraph (b)(2)(A) of this Rule. Ventilator services are paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.
- (B) A facility's initial direct rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. Rates in subsequent years are determined by applying the nursing facility direct adjustment factor to the previous 12 month cost report direct cost.
- (C) Cost reports and settlements for this service will be in accordance with Rule .0104 of this Section and return

on equity is allowed as defined in Rule .0105 of this Section.

- (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components can be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that are eligible for a combined single rate are small freestanding facilities with less than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities are reimbursed at higher direct rates as described in Paragraph (b)(2)(A) of this Rule.

(g) In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate.

(h) Religious Dietary Considerations.

- (1) A standard amount may be added to a nursing facility's skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule, for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates are determined from a new data base. Fifty or more percent of the

patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.

- (3) The special dietary add-on rate may not exceed more than a 30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on will be adjusted by the direct rate inflation factor each year until a new data base is used to determine rates.
- (4) This special dietary add-on rate will become part of the facility's direct rates to be reconciled in the annual cost report settlement.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; 29 C.F.R. 1910, Subpart Z; S.L. 1991, c. 689, s. 95.

.0103 REASONABLE AND NON-ALLOWABLE COSTS

(a) Providers have a responsibility to operate economically and efficiently so that their costs are reasonable. Providers are required to provide services at the lowest possible costs in compliance with Federal and State laws, regulations for licensing and certification, and standards for quality of care and patients' safety. Providers are also responsible for the financial actions of their agents (e.g., management companies) in this regard.

(b) The state may publish guidelines to define reasonable costs in certain areas after study of industry-wide cost conditions.

(c) The following costs are considered non-allowable facility costs because they are not related to patient care or are specifically disallowed under the North Carolina State Plan:

- (1) bad debts;
- (2) advertising--except personnel want ads, and one line yellow page (indicating facility address);
- (3) life insurance (except for employee group plans);
- (4) interest paid to a related party;
- (5) contributions, including political or church-related, charity and courtesy allowances;
- (6) prescription drugs and insulin (available to recipients under State Medicaid Drug

Program);

- (7) vending machine expenses;
- (8) personal grooming other than haircuts, shampooing (basic hair care services) and nail trimming; ~~performed by either facility staff or barbers/beauticians. The facility may elect the means of service delivery. The costs of services beyond those provided by the nursing facility are the responsibility of the patient;~~
- (9) state or federal corporate income taxes, plus any penalties and interest;
- (10) telephone, television, or radio for personal use of patient;
- (11) penalties or interest on income taxes;
- (12) dental expenses--except for consultant fees as required by law;
- (13) personal income taxes, plus any penalties and interest;
- (14) farm equipment and other expenses;
- (15) retainers, unless itemized services of equal value have been rendered;
- (16) physicians fees for other than utilization review or medical directors or medical consultants as required by law;
- (17) country club dues;
- (18) sitter services or private duty nurses;
- (19) fines or penalties;
- (20) guest meals;
- (21) morgue boxes;
- (22) leave days--except therapeutic leave;
- (23) personal clothing;
- (24) ancillary costs that are billable to Medicare or other third party payors.

(d) For those non-allowable expenses which generate income, such as prescription drugs, vending machines, ~~barber and beauty shop~~, etc., expense should be identified as a non-reimbursable cost center, where determinable. If the provider cannot determine the proper amount of expense which is to be identified, then the income which was generated must be offset in full to the appropriate cost center.

Authority *G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

.0106 RECONSIDERATION REVIEWS

(a) As required by 42 CFR 447, Subpart C, providers may submit additional evidence for determination of reimbursement amounts pursuant to the Medicaid State Plan, Attachment 4.19-D, Section .0106, which is hereby adopted by refer-

ence according to G.S. 150B-14(c).

(b) Indirect rates shall not be adjusted on reconsideration review.

(c) A direct rate may be adjusted on reconsideration review if a provider can establish to the satisfaction of the state agency that such an adjustment is necessary to protect the health and safety of its patients and to sustain its financial viability. A facility is considered to be financially viable, and therefore not eligible for a rate adjustment, if its total Medicaid rate payments and return on equity exceeded its total Medicaid cost as reported in the most recent 12 month cost report. ~~available.~~ Providers are expected to utilize all available funds to provide the services that their patients need. Once a provider has reported a loss for a ~~certain year.~~ 12 month period beginning October 1 and ending September 30, a direct rate of adjustment can then be negotiated for the following year at a level no greater than what is absolutely necessary for patient care and for the financial viability of the facility. The adjusted rate cannot exceed the applicable maximum direct rate as established by Rule .0102(b)(3) (4) and (5).

(d) Direct rates may also be adjusted without regard to the provisions of Paragraph (c) of this Rule for the following reasons:

- (1) to correct erroneous data in the rate base;
- (2) to accommodate any changes in the minimum standards or minimum levels of resources required in the provision of patient care that are mandated by state or federal laws or regulation;
- (3) to maintain services at levels commensurate with any rate adjustments that are allowed between the base year and the year in which the rates derived from that base year are first effective.

(e) Adjustments to reimbursement settlements shall be made on the basis of the reimbursement principles set forth in this plan or incorporated here by reference [See Rule .0104(e)].

Authority *G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0303 METHODS AND STANDARDS FOR DETERMINING RATES

(a) Prospective rates for each ICF-MR provider shall be determined annually to be effective for a

12-month period beginning July 1 and ending the following June 30. These rates shall be derived from actual cost data from a base year to be selected by the state presented in cost reports submitted to and audited by the state agency. The year to which this cost report applies shall be known as the base year. Appropriate adjustments may be made to these base year costs to accommodate changes in applicable federal and state laws or regulations.

(b) The per diem rate for each provider in the base year shall be determined by dividing the total allowable costs in that year by the total actual number of patient days.

(c) The base year per diem rate for each provider will be inflated from the base year to the year in which the rate will apply using inflation factors for each intervening year computed as follows:

- (1) Cost data from the base year cost reports will be aggregated to determine the proportion (percent of total) of cost in each of the following categories:
 - (A) Labor;
 - (B) Other Operating;
 - (C) Capital which includes the cost for use or ownership of physical plant and movable equipment.
- (2) Inflation rates for each category will be established using official estimates of inflation provided by the North Carolina Office of Budget and Management for the year in which the rate shall apply.
 - (A) Labor costs shall be inflated by the estimate of the increase in Average Annual Service Wages in North Carolina, adjusted for any special factors related to ICF-MR personnel, however, salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Director of the Division of Medical Assistance;
 - (B) Other costs shall be inflated by the estimate of the Implicit Price Deflator for the U. S. Gross National Product; however, management fees shall be limited to a sum equal to seven percent of the maximum ICF rate in the state during the current fiscal year;
 - (C) Capital cost shall not be inflated.
- (3) Rates determined in 10 NCAC 26H .0303(c)(2) will be multiplied times the percentages determined in 10 NCAC 26H .0303(c)(1) to obtain a weighted

inflation rate for each category of cost.

- (4) The weighted rates determined in 10 NCAC 26H .0303(c)(3) will be added to obtain the composite inflation rate.
- (5) No inflation factor for any provider will exceed the maximum amount permitted for that provider by federal or state law or regulation.

(d) The prospective rate established in Paragraph (c) of this Rule, will be paid to the provider for every Medicaid eligible day during the year in which it will apply. These prospective rates may be determined after the date in which they are to go into effect and paid retroactively to that date.

(e) If allowable costs are less than prospective payments during a cost reporting period, a provider may retain one-half of the difference between costs and payments, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments must be refunded to the Division of Medical Assistance.

(f) New Effective for facilities that have been awarded a certificate of need on or after January 1, 1993, new providers are those that have not filed a cost report covering at least one full year of normal operations. A new provider's initial rate shall ~~have be~~ a negotiated rate based upon the provider's proposed budget. This rate for a new facility shall not exceed the maximum average rate being allowed ~~to~~ for existing facilities or any other limit established in state law. The rate shall be rebased to the actual cost incurred in the first full year of normal operations in the ~~first~~ year after audited data for that first year of normal operations is completed.

(g) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost vacation leave earned for that year and all previous years less vacation leave used or expended over the same period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on a reasonable estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(h) Start-up costs are ~~cost~~ costs incurred by an ICF-MR provider while preparing to provide

services. It includes the cost incurred by providers to provide services at the level necessary to obtain certification less any revenue or grants related to start-up. The North Carolina Medicaid Program will reimburse these start-up costs up to a maximum equal to the facility's rate times its beds times 120 days. This reimbursement will be ~~made in addition to~~ included in the facility's per diem rate. ~~The amount shall be payable upon receipt of a special start-up cost report. This report should be filed within 15 months of the certification date.~~ These start-up costs will be amortized over 36 months and will be reported as Administrative and General in the operating cost report. A start-up cost report will be required to be submitted along with the initial cost report submitted by the new ICF-MR provider once certified to participate in the Medicaid program. See Paragraph (a) of this Rule for initial cost reporting requirements. No advance of start-up funds shall be made. ~~prior to the desk audit of the start-up cost report. This Paragraph will be effective for facilities that have been awarded a Certificate of Need on or after January 1, 1993.~~

(i) The annual capital cost or lease expense ~~limitation shall be limited to the sum of (1) and (2) as follows:~~ apply:

(1) To all facilities with 21 or more beds and to facilities consisting of multiple detached buildings in which at least one contains eight certified beds. The facilities covered by this limit shall have been awarded a Certificate of Need before January 1, 1993. The annual capital cost or lease expense limit shall be the lesser of actual cost or the sum of Subparagraphs (i)(1)(A) and (B) of this Rule as follows:

(A) ~~(1) The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars (\$30,000) per bed (capital recovery base) during the fiscal year 1982-83 adjusted for changes in the Dodge Building Cost Index of North Carolina cities for each year since 1982-83. This amount is computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association following cost indexes:~~

(i) For the period after 1982-83 and prior to 1992-93 the capital recovery base shall be adjusted for

changes in the Dodge Building Cost Index of North Carolina cities.

(ii) For the period after 1991-92 the capital recovery base shall be adjusted for changes in the implicit price deflator for residential structures as provided by the Office of State Budget and Management. Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.

(B) (2) An interest allowance equal to ten percent of the ~~maximum allowed historical cost~~ capital recovery base used to compute the annual depreciation on plant and fixed equipment.

(C) (3) This ~~capital/lease annual capital cost or lease expense~~ limit does not apply to leases in effect prior to August 3, 1983.

~~(4) The limitation on capital cost shall not be applied to facilities with fewer than 21 certified beds, nor to facilities consisting of multiple detached buildings, no one of which contains more than eight certified beds.~~

(2) To all facilities that have been awarded a Certificate of Need on or after January 1, 1993, the annual capital cost or lease expense shall be limited to the lesser of actual cost or the fair and reasonable depreciation and interest expense calculated on the capital recovery based in effect at the time of certification and enrollment into the Medicaid program.

(A) Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.

(B) Interest expense is computed using a 10 percent rate of interest.

(C) The capital recovery base is established as thirty thousand dollars (\$30,000) of plant and fixed equipment assets per bed during the fiscal year 1982-83 adjusted for the changes in the cost indexes contained in Subparagraphs (i), (1)(A), (i) and (ii) of this Rule.

- (D) Recovery of the cost of material additions to plant and fixed equipment subsequent to certification and enrollment in the Medicaid program shall be subject to review on a case by case basis.

(j) In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. Part 447, Subpart C.

SECTION .0400 - PROVIDER FEE SCHEDULES

.0401 PHYSICIAN'S FEE SCHEDULE

Effective January 1, 1993, physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere will be reimbursed based on the North Carolina Medicaid Fee Schedule. The North Carolina Medicaid Fee Schedule is based on the Medicare Fee Schedule Resource Based Relative Value System (RBRVS), (42 CFR parts 405, 413, and 415) but with the following clarifications and modifications:

- (1) A maximum fee is established for each service and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the provider's customary charge to the general public for the particular service rendered. This plan applies to physicians, chiropractors, optometrists, podiatrists, and dentists.
- (2) (1) Fees for office services, hospital services, nursing home services, consultations, and obstetric services are derived from the standard fees that were estab-

lished for all specialties effective January 1, 1988. Fees are established on a state-wide basis using the Medicare Geographic Practice Cost Indices for the North Carolina urban locality.

- (2) Fees for all other services are established by applying the following method to the fees in effect on May 1, 1989:
 - (a) The higher of the inpatient or outpatient fee is selected for each service within each specialty and the weighted average of this amount is computed among all specialties. The average is weighted by the number of services billed by each specialty in 1988.
 - (b) The weighted average fee is then increased by ten percent.
- (3) Annual fee increases are applied each January 1 based on the forecast of the gross national product (GNP) implicit price deflator, but not to exceed the percentage increase approved by the North Carolina State Legislature.
- (4) Fees for new services are established based on the fees for similar existing services. If there are no similar services the fee is established at 75 percent of estimated average charge.
- (5) Fees for particular services can be increased based on administrative review if it is determined that the service is essential to the health needs of Medicaid recipients, that no alternative treatment is available, and that a fee adjustment is necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients. A fee may also be decreased based on administrative review if it is determined that the fee may exceed the Medicare allowable amount for the same or similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is too high in relation to the skills, time, and other resources required to provide the particular service.
- (3) There will be no transition period in applying the Medicaid fees whereas Medicare has a five year phase-in period.
- (4) Annual changes in the Medicaid payments will be applied each January 1 based on Medicare updates through July 1 of the previous calendar year and fee increases will be applied based on the forecast of the Gross National Product

(GNP) Implicit Price Deflator. Said annual changes in the Medicaid payments shall not exceed the percentage increase granted by the North Carolina General Assembly.

- (5) Fees for services deemed to be associated with adequacy of access to health care services may be increased based on administrative review. The service must be essential to the health needs of the Medicaid recipients, no other comparable treatment available and a fee adjustment must be necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients.
- (6) Fees for new services are established based on this Rule. If there is no relative value unit (RVU) available from Medicare, fees will be established based on the fees for similar services. If there is no RVU or similar service, the fee will be set of 75 percent of the provider's customary charge to the general public.

Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

.0404 OTHER SERVICES PERFORMED BY PHYSICIANS/OTHER PRACTITIONERS

A maximum fee is established for other services performed by physicians and other practitioners and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the provider's customary charge to the general public for the particular service rendered.

Fees for office services, hospital services, nursing home services, consultations, and obstetric services are derived from the standard fees that were established for all specialties effective January 1, 1988.

- (2) Fees for all services are established by applying the following method to the fees in effect on May 1, 1989:
 - (a) The higher of the inpatient or outpatient fee is selected for each service within each specialty and the weighted average of this amount is computed among all specialties. The average is weighted by the number of services billed by each specialty in 1988.
 - (b) The weighted average fee is then increased by 10 percent.
- (3) Annual fee increases are applied each

January 1 based on the forecast of the gross national product (GNP) implicit price deflator, but not to exceed the percentage increase approved by the North Carolina General Assembly.

- (4) Fees for new services are established based on the fees for similar existing services. If there are no similar services the fee is established at 75 percent of estimated average charge.
- (5) Fees for particular services can be increased based on administrative review if it is determined that the service is essential to the health needs of Medicaid recipients, that no alternative treatment is available, and that a fee adjustment is necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients. A fee may also be decreased based on administrative review if it is determined that the fee may exceed the Medicare allowable amount for the same or similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is too high in relation to the skills, time, and other resources required to provide the particular service.

Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

SUBCHAPTER 26N - DRUG USE REVIEW (DUR)

SECTION .0100 - DRUG USE REVIEW BOARD

.0101 APPLICABILITY

The Drug Use Review will apply to Medicaid covered outpatient drugs that are billed directly to the North Carolina Medicaid program as pharmacy covered services. Covered outpatient drugs dispensed by Health Maintenance Organizations who have a contract with the Division of Medical Assistance to provide services to Medicaid recipients for a set monthly fee will not be subject to the requirements of this Section. If a drug is administered to a Medicaid recipient by a health care provider who is licensed to administer such drugs, the prospective portion of the Drug Use Review in this Section does not apply. The Division of Medical Assistance has the option to exempt nursing facility patients from the retrospective portion of the Drug Use Review. If a nursing

facility is determined to be out of compliance with the drug regimen review procedures prescribed for such facilities in regulations implementing section 1919 of the Social Security Act, currently at section 483.60 of title 42, of the Code of Federal Regulations, the retrospective portion of the Drug Use Review requirements of this Section will apply.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0102 ESTABLISHMENT

The Division of Medical Assistance will establish a Drug Use Review Board.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0103 MEMBERSHIP

(a) The Board shall consist of the Division of Medical Assistance Drug Use Review Coordinator, five licensed and actively practicing physicians, five licensed and actively practicing pharmacists, and at least two additional individuals with knowledge and expertise in one or more of the following:

- (1) the clinically appropriate prescribing of Medicaid covered outpatient drugs;
- (2) the clinically appropriate dispensing and monitoring of Medicaid covered outpatient drugs;
- (3) drug use review, evaluation, and intervention;
- (4) medical quality assurance.

(b) The North Carolina Pharmacy Association, the North Carolina Medical Society, and the Old North State Medical Society will be asked to make nominations for some of the positions on the Board. The Director reserves the right to accept or reject nominations received.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0104 TERMS OF MEMBERSHIP

The term of membership beginning with appointments made in 1993 will be two years.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0105 CHAIRMEN

One pharmacist and one physician shall serve as Co-Chairmen of the Board. Each Co-Chairman

will be elected by his peers. Beginning with elections held in 1994, the term of the Chairmen will be one year. Beginning in 1994, membership on the Board of at least one previous year will be required to establish eligibility for serving as the Chair.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0106 ACTIVITIES

(a) The activities of the Drug Use Review Board shall include but are not limited to making recommendations for rules to the Division Directors for Medicaid recipients for the following:

- (1) retrospective review of Medicaid claims information for drug therapy problems;
- (2) application of standards for prospective and retrospective Drug Use Review;
- (3) ongoing interventions for physicians, pharmacists, and recipients targeted toward therapy problems identified in the course of Medicaid retrospective drug use reviews;
- (4) preparation of an annual report to the Division of Medical Assistance on the Drug Use Review process;
- (5) programs to educate pharmacists and practitioners on common drug therapy problems identified in the Medicaid drug use reviews with the aim of improving prescribing or dispensing practices.

(b) The criteria and standards for the drug therapy review adopted by the Division upon recommendation by the Drug Use Review Board will be available to pharmacists, physicians, and the general public.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0107 RESPONSIBILITIES

The Drug Use Review Board does not have rule making authority. The Division of Medical Assistance has the authority to reject recommendations of the Drug Use Review Board. In the event of such rejections, Division of Medical Assistance will notify the Drug Use Review Board, in writing, of the reasons for its action.

Authority G.S. 108-68; Social Security Act Section 1927(g).

SECTION .0200 - PROSPECTIVE DRUG

REVIEW

.0201 OFFER TO COUNSEL

At the time that a prescription for a Medicaid covered outpatient drug is dispensed, the pharmacist must inform the Medicaid recipient, or his representative, that the pharmacist is available to discuss at least the following information unless in the professional judgment of the pharmacist or the patient's physician it is deemed inappropriate:

- (1) the name and description of the medication;
- (2) the route, dosage form, dosage, route of administration, and duration of drug therapy;
- (3) special directions and precautions for preparation, administration and use by the patient;
- (4) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (5) techniques for self-monitoring drug therapy;
- (6) proper storage;
- (7) prescription refill information;
- (8) action to be taken in the event of a missed dose.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0202 COUNSELING

Unless the Medicaid recipient or his representative refuses counseling, the counseling must be done by a pharmacist. All counseling shall be done in a manner most appropriate to the specific patient and subject to the professional judgment of the pharmacist.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0203 INDIVIDUAL HISTORY

The pharmacist must ask the recipient or his representative if he is willing to provide the pharmacist with individual history information to include name, address, telephone number, gender, age, diagnoses, known allergies and drug reactions, and a comprehensive list of current medications and relevant devices. The pharmacist must explain to the recipient or his representative that this information will only be used to conduct a drug therapy review at the time of dispensing of

each new prescription to identify potential indications of adverse risk regarding the prescription. If the Medicaid recipient or his representative chooses to provide this information, the pharmacist must retain the information so it can be used currently and at the time of future dispensing.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0204 DRUG THERAPY REVIEW/ COORDINATION W/ PRESCRIBING PHYSICIAN

At the time of dispensing each new Medicaid prescription, the pharmacist will use the information provided by the client currently or in the pharmacy record to identify potential indications of adverse risk for the Medicaid recipient if he takes the prescribed drug. The pharmacist will use either software or written procedures following guidelines issued by the Drug Use Review Board to review therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and drug allergy interactions. The pharmacist must take steps to resolve any problem found including contacting the physician when necessary.

The pharmacist must notify the prescribing physician if the Medicaid recipient refuses the prescription.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0205 CONFIDENTIALITY

The pharmacist must guard the confidentiality of the recipient's individual history information while he is securing the information, when retaining it for future use, and when providing counseling to the recipient.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0206 DOCUMENTATION REQUIREMENTS AND COMPLIANCE MONITORING

The Division of Medical Assistance will identify possible non-compliance with the prospective Drug Use Review screening through the use of quarterly retrospective Drug Use Review profiles to identify pharmacies showing high incidences of therapeutic problems detectable by prospective Drug Use Review screening. The Division of Medical Assistance Drug Use Review Coordinator will

discuss with the individual pharmacist these indications of possible non-compliance with the Medicaid prospective Drug Use Review.

Authority G.S. 108-68; Social Security Act Section 1927(g).

SECTION .0300 - RETROSPECTIVE DRUG USE REVIEW

.0301 SCREENING AND PATTERN ANALYSIS

At least quarterly, the Medicaid drug claims, in conjunction with other Medicaid claims as needed for clinical purposes, will be subjected to screening against predetermined standards approved by the Drug Use Review Board. The objective of the screening is to identify patterns of behavior involving physicians, pharmacists, and individual Medicaid recipients or patterns associated with specific drugs or groups of drugs. In addition, individual incidences of screen failure associated with a specific recipient will be identified for intervention alerts.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0302 INTERVENTIONS

The primary objective of the retrospective Drug Use Review is to provide education to pharmacists and physicians, both individually and collectively, in order to improve prescribing and dispensing practices. The intervention and educational programs will be developed by the Drug Use Review Board and will be updated as more information is available from the retrospective review process.

The Drug Use Review Board may establish referral processes to the Board of Pharmacy, the Board of Medical Examiners, or the Division of Medical Assistance Program Integrity Section for individual pharmacists or physicians who continue to demonstrate patterns of prescribing or dispensing which put the Medicaid recipient at risk from drug therapy problems even after repeated warnings through Drug Use Review interventions.

Authority G.S. 108-68; Social Security Act Section 1927(g).

.0303 COMPLIANCE MONITORING

The physician's and pharmacist's responses to the interventions undertaken as a result of the retrospective Drug Use Review will be tracked. The Drug Use Review Board will establish selec-

tion criteria for intensified review and monitoring of individual pharmacists and physicians.

Authority G.S. 108-68; Social Security Act Section 1927(g).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0101.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at 1:30 p.m. on November 17, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.

Reason for Proposed Action: This amendment adds a coverage group of Qualified Working and Disabled Individuals (QWDI) as mandated by federal law 42 U.S.C. 1396a (a)(10) and 42 U.S.C. 1396d (s).

Comment Procedures: Written comments concerning this amendment must be submitted by November 17, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0100 - COVERAGE GROUPS

.0101 MANDATORY

The following groups required by 42 U.S.C. 1396a (a) (10) ~~(A)~~ ~~(i)~~ shall be eligible for Medicaid:

- (1) Recipients receiving AFDC.
- (2) Deemed recipients of AFDC including:
 - (a) Individuals denied AFDC solely because the payment amount would be less than ten dollars (\$10.00),

- (b) Participants in AFDC work supplementation programs approved in the AFDC State Plan,
- (c) Individuals deemed to be AFDC recipients for four months following termination of AFDC due to collection or increased collection of child support,
- (d) Individuals receiving transitional Medicaid as described in 42 U.S.C. 1396s when AFDC eligibility is lost due to increased earnings,
- (e) Individuals for whom an adoption assistance agreements in effect or foster care maintenance payments are being made under Title IV E of the Social Security Act as described at 42 U.S.C. 673 (b).
- (3) Qualified pregnant women as defined at 42 U.S.C. 1396d(n)(1).
- (4) Qualified children as defined at 42 U.S.C. 1396d(n)(2).
- (5) Pregnant women, during a 60 day period following termination of the pregnancy, for pregnancy related and post partum services if they applied for Medicaid prior to termination of the pregnancy and were eligible on the date pregnancy is terminated.
- (6) Infants, born to a woman who was eligible for and receiving Medicaid on the date of birth, for up to one year from the date of birth; as long as the mother remains eligible for Medicaid.
- (7) Aged, blind or disabled individuals who meet financial eligibility criteria more restrictive than those of the SSI program.
- (8) Individuals who meet the requirements under 42 U.S.C. 1382h(a) or (b)(1).
- (9) Blind or disabled individuals who were eligible in December 1973 as blind or disabled and who for each consecutive month since December 1973 continue to meet December 1973 eligibility criteria.
- (10) Individuals who were eligible in December 1973 as aged, or blind, or disabled with an essential spouse and who, for each consecutive month since December 1973, continue to live with the essential spouse and meet December 1973 eligibility criteria.
- (11) Individuals who in December 1973 were eligible as the essential spouse of an aged, or blind, or disabled individual and who for each consecutive month since December 1973, have continued to live with that individual who has met Decem-

- ber 1973 eligibility criteria.
- (12) Qualified Medicare Beneficiaries described at 42 U.S.C. 1396d(p).
- (13) Pregnant women whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2), for pregnancy related services including labor and delivery.
- (14) Children born after September 30, 1983 and who are under age 19 who are described at 42 U.S.C. 1396a(1).
- (15) Qualified Disabled and Working Individuals described at 42 U.S.C. 1396d(s).

Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 1 .0109, .0431 - .0432.

The proposed effective date of this action is January 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A request for a public hearing must be made in writing, addressed to Ellen K. Sprenkel, N.C. Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611. This request must be received within 15 days of this notice.

Reason for Proposed Action:

11 NCAC 1 .0109 - To obviate the need for redundant definitions in and questions about interpretations of the provisions of Title 11.

11 NCAC 1 .0431 - To clarify the hearing procedures for ratemaking for personal automobile, homeowners, and workers' compensation insurance.

11 NCAC 1 .0432 - To provide for hearing rules for the NC Manufactured Housing Board in compliance with G.S. 150B-38(h).

Comment Procedures: Written comments may be sent to Ellen K. Sprengel, P.O. Box 26387, Raleigh, N.C. 27611. Anyone having questions should call Bill Hale at (919) 733-4529.

CHAPTER 1 - DEPARTMENTAL RULES

SECTION .0100 - GENERAL PROVISIONS

.0109 DEFINITIONS AND RULES OF CONSTRUCTION FOR THIS TITLE

(a) The definitions contained in G.S. 58-1-5 are incorporated in this Title by reference.

(b) The rules of construction contained in G.S. 12-3 apply in the construction of this Title.

Statutory Authority G.S. 58-2-40(1).

SECTION .0400 - ADMINISTRATIVE HEARINGS

.0431 RATEMAKING PROCEDURES FOR RATE BUREAU FILINGS

Hearing procedures for rate filings made by the North Carolina Rate Bureau shall be governed by the provisions of G.S. 58, Article 36 and G.S. 150B-39 through 150B-41.

Statutory Authority G.S. 58-2-40(1); 58-36-1; 58-36-10; 58-36-15; 58-36-20; 58-36-70; 150B-38.

.0432 MANUFACTURED HOUSING BOARD HEARINGS

The provisions of 11 NCAC 1 .0413 through 11 NCAC 1 .0430 apply to contested case hearings held by the North Carolina Manufactured Housing Board under G.S. 143-143.13 and 143-143.14.

Statutory Authority G.S. 58-2-40(1); 143-143.13; 143-143.14; 150B-38(h).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 5A .0301 - .0303.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 2:00 p.m. on November 19, 1992 at the Fire and Rescue Services Division, 111 Seaboard Avenue, Conference Room, Raleigh, N.C. 27604.

Reason for Proposed Action: To update and clarify provisions about the Firemen's Relief Fund administration.

Comment Procedures: Written comments may be sent to Kathy Lohr, Fire & Rescue Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Kathy Lohr at (919) 733-2142 or Ellen Sprengel at (919) 733-4529.

CHAPTER 5 - FIRE AND RESCUE SERVICES DIVISION

SUBCHAPTER 5A - FIRE AND RESCUE

SECTION .0300 - FIREMEN'S RELIEF FUND

.0301 ELIGIBLE MEMBERS

Each fire department ~~who~~ that wishes to be eligible to receive funds from the Firemen's Relief Fund shall ~~be serve~~ a rated fire insurance district and a member members of the North Carolina State Firemen's Association. ~~Prior to~~ Before January 1, each year, the North Carolina State Firemen's Association shall ~~certify to this division~~ an up-to-date provide the Fire and Rescue Services Division with a certified, current list of all member fire departments in good standing, the balance in each local fund, ~~and~~ the amount of bond covering each local fund, and verification that a financial statement was submitted. The State may provide a blanket bond for local government treasurers.

Statutory Authority G.S. 58-2-40(1); 58-84-30; 58-84-40.

.0302 CERTIFICATION OF ELIGIBILITY

~~The clerk or finance officer of each city, county, or sanitary district which is served by an organized fire department shall, on or before October 31, of~~

~~each year, make and file with the Commissioner of Insurance his certification form required by G.S. 58-84-45 shall be entitled "Report of Fire Conditions" which shall include the following information for each fire department serving that unit of local government; and shall, in addition to the information required by G.S. 58-84-45, include the following:~~

- (1) The name of the city, fire district, or sanitary district;
- (2) Current personnel roster, type and amount of equipment, and type of water supply used for fire suppression;
- (3) Names of the "Board of Trustees of the Local Firemen's Relief Fund";
- (4) Identity of the Treasurer of the Local Firemen's Relief Fund; and
- ~~(5) Amount of bond on the treasurer;~~
- ~~(6)~~(5) Membership status in the North Carolina State Firemen's Association;

Statutory Authority G.S. 58-2-40(1); 58-84-45.

.0303 ADMINISTRATION OF FIREMEN'S RELIEF FUND

(a) The Fire and Rescue Services Division shall compile and maintain accurate records utilizing both computer and paper records, including but not limited to the following information:

- (1) Certifications of the "Report of Fire Conditions" filed by the local clerks or finance officers;
- (2) Certifications of the member fire departments, the fund balance of each fund, the bond amount covering each fund, filed by the North Carolina State Firemen's Association each year;
- (3) Amount of Firemen's Relief Fund tax assigned by the ~~Technical Operations~~ Financial Compliance Division of the North Carolina Department of Insurance to each city, county fire district, and sanitary district;

(b) If a fire department dissolves, the following procedures apply:

- (1) If a neighboring fire department elects to expand its boundaries to include the area served by the dissolved fire department, with the approval of the Department of Insurance, the Firemen's Relief Fund account will be transferred to the expanding fire department.
- (2) If no neighboring fire department elects to include the dissolved fire department's territory into its own, the

dissolved fire department will be shown as "disqualified" according to G.S. 58-84-40, 58-84-45, and 58-84-50.

(c) The Division then shall certify to the Budget Division of the North Carolina Department of Insurance the eligibility of each city, county fire district, and sanitary district to receive annual payments from the fund. Fire department checks will be disbursed by the Department of Insurance to the finance officer of the local government entity.

Statutory Authority G.S. 58-2-40(1); 58-84-25; 58-85-1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to repeal rule(s) cited as 11 NCAC 5A .0403 - .0404.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 2:00 p.m. on November 19, 1992 at the Fire & Rescue Services Division, 111 Seaboard Avenue, Conference Room, Raleigh, N.C. 27604.

Reason for Proposed Action: Rules are obsolete.

Comment Procedures: Written comments may be sent to Kathy Lohr, Fire and Rescue Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Kathy Lohr at (919) 733-2142 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 5 - FIRE AND RESCUE SERVICES DIVISION

SUBCHAPTER 5A - FIRE AND RESCUE

SECTION .0400 - ADMINISTRATION OF OTHER FUNDS

.0403 RURAL VOLUNTEER FIRE DEPARTMENT FUND

~~The Rural Volunteer Fire Department Fund shall be administered in accordance with the provisions~~

of NCGS 118-50.

Statutory Authority G.S. 118-50.

.0404 RESCUE SQUAD WORKERS' RELIEF FUND

The Rescue Squad Workers' Relief Fund shall be administered in accordance with the provisions of NCGS 118-61.

Statutory Authority G.S. 118-61.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 5A .0601-.0604; and .0701-.0705.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 2:00 p.m. on November 19, 1992 at the Fire & Rescue Services Division, 111 Seaboard Avenue, Conference Room, Raleigh, N.C. 27604.

Reason for Proposed Action:

.0601-.0604 - To provide procedures for the awarding of equipment grant funds to volunteer fire departments.

.0701-.0705 - To provide procedures for the awarding of equipment grant funds to rescue and rescue/EMS squads.

Comment Procedures: Written comments may be sent to Kathy Lohr, Fire & Rescue Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Kathy Lohr at (919) 733-2142 or Ellen Sprenkel at (919) 733-4529.

SECTION .0600 - VOLUNTEER FIRE DEPARTMENT FUND

.0601 DEFINITIONS

As used in this section:

(1) "Department" means a volunteer fire

department situated in the State of North Carolina.

(2) "Division" means the Fire and Rescue Services Division of the North Carolina Department of Insurance.

(3) "Fund" means the Volunteer Fire Department Fund created in G.S. 58-87-1.

Statutory Authority G.S. 58-2-40(1); 58-87-1.

.0602 FIRE DISTRICT RATING CERTIFICATION

If a department is actively working with the Division to obtain its fire district rating certification as of March 1, it may apply for a grant. In order to receive a grant, the department must obtain its fire district rating certification within 60 days after the Division has determined that the department has otherwise satisfied the requirements of G.S. 58-87-1 and this Section.

Statutory Authority G.S. 58-2-40(1).

.0603 REQUIREMENTS

(a) Application forms will be mailed by the Division to all known departments by January 2 of each year.

(b) Any application received by the Division that is incorrect or incomplete will be returned to the department with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the department. The failure by the department to return the requested correct or complete information will result in the forfeiture by the department of its eligibility for a grant during that current grant cycle.

(c) Applications must be mailed to the Division and be postmarked no later than March 1. Applications bearing postmarks later than March 1 are disqualified. The names of grant recipients will be announced on May 15. In the event May 15 falls on a weekend, the announcement will be made on the following Monday.

(d) The Division may approve all or part of an application.

(e) If the application includes a request for a motor vehicle, the vehicle specifications and, if used, the previous year's maintenance records must accompany the application.

(f) The following documents must accompany a grant application:

(1) A contract showing an agreement between the department and a county for the department to provide fire protec-

tion to a district;

- (2) An active roster comprising a list of members meeting the training requirements in G.S. 58-86-30;
- (3) A charter showing the incorporation of the department as a nonprofit corporation;
- (4) A statement verifying the population that the department serves;
- (5) A financial statement showing the fiscal status of the department; and
- (6) A statement verifying that the department is financially able to match the grant.

(g) Agreements between departments and vendors, payment agreements, and equipment invoices must be received by the Division no later than September 30 following the announcement of grant recipients. Departments submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before September 30 will be contacted by the Division and given 10 business days to submit correct documents. The failure of any department to comply will result in the department forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a department before May 15 or equipment that is back-ordered by a department on or before September 30 may not be funded by grants from the Fund.

(h) Equipment purchased with grants is subject to periodic inspection by Division personnel.

Statutory Authority G.S. 58-2-40(1).

.0604 OTHER GRANT CRITERIA

In addition to criteria in G.S. 58-87-1, in awarding grants the Division shall consider the following criteria in relation to each department:

- (1) number and age of vehicles;
- (2) population served;
- (3) county per capita income;
- (4) source of department funding;
- (5) money on hand;
- (6) protective equipment requested;
- (7) miscellaneous equipment requested;
- (8) vehicles requested;
- (9) capital improvements requested; and
- (10) current fire insurance rating.

Statutory Authority G.S. 58-2-40(1); 58-87-1.

SECTION .0700 - VOLUNTEER RESCUE/EMS FUND

.0701 DEFINITIONS

As used in this section:

- (1) "Division" means the Fire and Rescue Services Division of the North Carolina Department of Insurance.
- (2) "Fund" means the Volunteer Rescue/EMS Fund created in G.S. 58-87-5.
- (3) "Unit" means a volunteer rescue or rescue/EMS unit situated in the State of North Carolina.

Statutory Authority G.S. 58-2-40(1); 58-87-5.

.0702 ALS CERTIFICATION

If a unit is actively working with the Office of Emergency Medical Services (OEMS) to obtain its Advanced Life Support (ALS) certification as of October 1, that unit may apply for a grant. In order to receive a grant, the unit must obtain its ALS certification from OEMS within 60 days after the Division has determined that the unit has otherwise satisfied the requirements in G.S. 58-87-5 and this Section.

Statutory Authority G.S. 58-2-40(1); 58-87-5.

.0703 REQUIREMENTS FOR UNITS REQUIRED TO MATCH GRANTS

(a) Application forms will be mailed by the Division to all known units by August 1 of each year.

(b) Any application received by the Division that is incorrect or incomplete will be returned to the unit with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the unit. The failure by the unit to return the requested correct or complete information will result in the forfeiture by the unit of its eligibility for a grant during that current grant cycle.

(c) Applications must be mailed to the Division and be postmarked no later than October 1. Applications bearing postmarks later than October 1 are disqualified. The names of the grant recipients will be announced on December 15. In the event December 15 falls on a weekend, the announcement will be made on the following Monday.

(d) The Division may approve all or part of an application.

(e) If the application includes a request for a vehicle, the vehicle specifications and, if used, the previous year's maintenance records must accompany the application.

(f) The following documents must accompany a grant application;

- (1) A contract showing that a county recognizes the unit as providing rescue or rescue/EMS services to a specified district;
- (2) A charter showing the incorporation of the unit as a nonprofit corporation;
- (3) An active roster comprising a list of unit members;
- (4) A statement verifying that the unit is financially able to match the amount of the grant;
- (5) A financial statement showing the fiscal status of the unit; and
- (6) A rescue provider statement, which may be submitted in lieu of the contract required by Subparagraph (1) of this Paragraph.

(g) Agreements between units and vendors, payment agreements, and equipment invoices must be received by the Division no later than April 30. Units submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before April 30 will be contacted by the Division and given 10 business days to submit the correct documents. The failure of any unit to comply will result in the unit forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a unit before December 15 or equipment that is back-ordered by a unit on or before April 30 may not be funded by grants from the Fund.

(h) Equipment purchased with grants is subject to periodic inspection by Division personnel.

Statutory Authority G.S. 58-2-40(1); 58-87-5.

.0704 REQUIREMENTS FOR UNITS NOT REQUIRED TO MATCH GRANTS

Units that are not required to match funds must comply with 11 NCAC 5A .0703 except for Subparagraph (f)(4) of that Rule, which requires the filing of a statement verifying that a unit is financially able to match a grant.

Statutory Authority G.S. 58-2-40(1); 58-87-5.

.0705 OTHER GRANT CRITERIA

In addition to criteria in G.S. 58-87-5 and other Rules in this Section, in awarding grants the Division shall consider the following criteria in relation to each unit:

- (1) number of personnel;
- (2) personnel salary paid by the unit or the

city or county;

- (3) number and age of vehicles;
- (4) county per capita income;
- (5) unit funding sources;
- (6) money on hand;
- (7) protective equipment requested;
- (8) miscellaneous equipment requested; and
- (9) capital improvements requested.

Statutory Authority G.S. 58-2-40(10); 58-87-5.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to amend rule cited as 11 NCAC 6A .0802.

The proposed effective date of this action is January 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A request for a public hearing must be made in writing, addressed to Ellen K. Sprenkel, N.C. Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611.

Reason for Proposed Action: To extend the continuing education requirements to adjusters and to require the law update courses every other year.

Comment Procedures: Written comments may be sent to Ellen K. Sprenkel, P.O. Box 26387, Raleigh, N.C. 27611. Anyone having questions should call Tony Higgins at (919) 733-4935 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

.0802 LICENSEE REQUIREMENTS

(a) Life, accident, and health licensees shall obtain 12 ICECs during each calendar year in approved life, accident, and health courses. ~~courses including the mandatory statute and rule update.~~

(b) Fire and casualty licensees shall obtain 12 ICECs during each calendar year in approved fire and casualty ~~courses, including the mandatory statute and rule update, courses.~~

(c) Accident and health licensees shall obtain 12 ICECs during each calendar year in approved accident and health ~~courses, including the mandatory statute and rule update, courses.~~

(d) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, ~~including the mandatory statute and rule update and~~ a minimum of six ICECs for each kind of license.

(e) An instructor may receive up to twice the ICECs received by the students for some courses but may receive no ICECs for others, in the discretion of the Commissioner.

(f) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substantial enough to qualify for additional ICECs within a three calendar year period.

(g) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

(h) Licensees shall receive ICECs for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(i) Licensees shall not receive ICECs for courses completed prior to January 1, 1991.

(j) Licensees shall maintain records of all ICECs for three years following the obtaining of such ICECs, which records shall be available for inspection upon the Commissioner's request.

(k) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section, except for the mandatory statute and rule update.

(l) Licensees will be required to complete only the mandatory statute and rule update ~~each year~~ prescribed in Paragraph (p) of this Rule if they:

- (1) are age 65 or older; and
- (2) have been continuously licensed in the line of insurance for at least 25 years; and either
- (3) hold a nationally recognized professional designation for the line of insurance. Acceptable designations include

those listed in 11 NCAC 6A .0803 (a) and (b); or

- (4) meet the requirements of Subparagraphs (1) and (2) of this Paragraph and certify to the Department of Insurance annually they are inactive agency owners who neither solicit applications for insurance nor take part in the day to day operation of the agency.

(m) Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

(n) No credit will be given for courses taken before they have been approved by the Department.

(o) Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved fire and casualty courses; including, in calendar year 1993 and each even-numbered calendar year thereafter, the mandatory statute and rule update required by Paragraph (p) of this Rule. As used in this Section, "licensee" includes a person who holds an adjuster license and who is required to comply with this Section.

(p) In calendar year 1994 and in each even-numbered calendar year thereafter, each licensee shall complete an approved course that comprises information about and instruction in insurance and insurance-related statutes and administrative rules, including recent changes or developments in those statutes and rules. The Commissioner may also approve courses that also include relevant court decisions.

Statutory Authority G.S. 58-33-130.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 16 .0205.

The proposed effective date of this action is January 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A request for a public hearing must be made in writing, addressed to Ellen K. Sprenkel, N.C. Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611. This request must be received within 15 days of this notice.

Reason for Proposed Action: *The amendment clarifies data requirements for individual accident and health rate revisions submitted by insurers.*

Comment Procedures: *Written comments may be sent to Ellen K. Sprenkel, P.O. Box 26387, Raleigh, N.C. 27611. Anyone having questions should call Walter James at (919) 733-3284.*

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

.0205 DATA REQUIREMENTS FOR RATE REVISION SUBMISSION

With respect to any individual accident and health insurance policy governed by Articles 1 through 64 of Chapter 58 for which an adjustment of premium rate is allowed by law, the insurer shall submit an actuarial memorandum describing and demonstrating the development of any requested premium rate revision. The actuarial memorandum shall contain a subsection clearly identified as "Additional Data Requirements." The initial rate revision filing shall be submitted to and stamped received by the Department's Life and Health Division. An insurer shall submit all data required by this Rule within 45 days after the date that the initial rate revision filing is stamped received. Subsequent data submissions on incomplete initial rate revision filings shall be made directly to the Department's Actuarial Services Division within the 45 day period. An insurer may continue to submit data in accordance with data submission procedures followed before the effective date of this Rule for a period not to exceed one year after the effective date of this Rule if an authorized officer of the insurer certifies to the Commissioner that the insurer's current information system cannot assemble data as required by this Rule. The data required in the "Additional Data Requirements" subsection shall include:

- (1) Identification of the submitted data as North Carolina or countrywide and consistent use of this data identification throughout this Section.
- (2) Identification of all policy forms by approved North Carolina policy form number.
- (3) The month, year, and percentage amount of all previous rate revisions.

- (4) The month and year that the rate revision is scheduled to be implemented (hereinafter referred to as the "implementation date").
- (5) The type of renewability provision contained in each policy form, e.g. guaranteed renewable.
- (6) The type of coverage provided by each policy form, e.g. medical expense.
- (7) The National Association of Insurance Commissioners minimum guideline loss ratio and, if different, the insurer's minimum guideline loss ratio.
- (8) The average annual premium for North Carolina and countrywide before and after the implementation of the rate revision.
- (9) The number of North Carolina and countrywide policyholders affected by the rate revision.
- (10) The requested rate revision percentage attributable to experience.
- (11) The requested rate revision percentage attributable to changes in benefits promulgated by Medicare, if applicable.
- (12) Identification and actuarial justification of all groupings of policy forms.
- (13) The historical calendar year earned premium subdivided by duration and expressed on an actual and a current premium rate basis for the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- (14) The "expected" incurred loss ratios for duration one through the duration selected by the insurer which does not exceed the duration coinciding with the fifth year following the implementation date.
- (15) The "expected" lapse rates for duration one through the duration selected by the insurer which does not exceed the duration coinciding with the fifth year following the implementation date.
- (16) The "actual" lapse rates for duration one through the duration coinciding with the calendar year for which the most recent experience is recorded.
- (17) The historical calendar year incurred claims, for other than Medicare supplement insurance, covering the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- (18) The historical calendar year incurred

claims, for Medicare supplement insurance, expressed on an actual and a current benefit level basis covering the period of time from the earliest date experience is recorded to the most recent date experience is recorded.

- (19) ~~The number of policy years contained within each historical calendar year of data provided.~~ An estimation of the amount of policy year exposure contributed by all policyholders within each calendar year of data provided.
- (20) A statement declaring whether this is an open block of business or a closed block of business.
- (21) An estimation of the annual earned premium on new issues for the period of time from the date that the most recent experience is last recorded to a date not exceeding the fifth year following the implementation date.
- (22) The number of months that the rate will be guaranteed to an individual policyholder.
- (23) The rate revision implementation method, such as the next premium due date following a given date, the next policy anniversary date, or otherwise; if otherwise, an explanation must be included.
- (24) A statement declaring the month and year of the earliest anticipated date of the next rate revision.
- (25) An explanation and actuarial justification of the apportionment of the aggregate rate revision within each policy form or between policy forms that have been grouped; and a demonstration that the apportionment of the aggregate rate revision yields the same premium income as if the rate revision had been applied uniformly.
- (26) An explanation and actuarial justification, if applicable, for changing any factor that affects the premium.
- (27) An explanation of the effect that the rate revision will have on the incurred loss ratio on those policies in force for three years or more as exhibited in the Medicare Supplement Experience Exhibit of the Annual Statement.
- (28) The name, address, and telephone number of an insurance company representative who will be available to answer questions relating to the rate revision.

Statutory Authority G.S. 58-2-40(1); 58-51-95; 58-63-15(7)b.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice/State Bureau of Information intends to adopt rule cited as 12 NCAC 4E .0204, with changes from the proposed text noticed in the Register, Volume 7, Issue 11, page 1097.

The proposed effective date of this action is January 4, 1993.

Reason for Proposed Action: The purpose of this rule is to permit SBI task force supervisors to have temporary management control over authorized personnel assigned to the task force from other agencies for purposes of DCI access and certification.

Comment Procedures: Comments may be submitted in writing, from October 15, 1992 to November 14, 1992. Written comments should be submitted to E.K. Best, Division of Criminal Information, 407 North Blount Street, Raleigh, N.C. 27601.

CHAPTER 4 - DIVISION OF CRIMINAL INFORMATION

SUBCHAPTER 4E - ORGANIZATIONAL RULES AND FUNCTIONS

SECTION .0200 - REQUIREMENTS FOR ACCESS

.0204 SBI TASK FORCE MANAGEMENT CONTROL

(a) When the SBI Director grants approval for the Bureau to participate in and supervise a joint criminal justice agency task force, those authorized staff assigned to the task force shall be temporarily considered under SBI management control for NCIC/DCI access and certification purposes provided the SBI supervisor responsible for the task force insures that:

- (1) Each person assigned to the task force shall be under the direct and immediate management control of any agency qualifying for full access under the provisions of Subchapter 4E Rule

.0201(a) of this Chapter;

(2) Each person shall be properly identified in DCI certification records as to the SBI district responsible for him, and the local agency having management control over him pursuant to Subparagraph (a)(1) of this Rule;

(3) The responsible SBI supervisor shall treat all task force staff as SBI employees in all matters pertaining to these Rules; and

(4) The responsible SBI supervisor shall immediately notify DCI in writing of the termination of any task force member upon such member's departure from the task force.

(b) Any in-service certification obtained while a member of a task force shall be terminated upon notification of such member's departure.

Statutory Authority G.S. 114-10; 114-10.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to amend rule cited as 12 NCAC 11 .0203.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at 11:00 a.m. on November 2, 1992 at the State Bureau of Investigations, Conference Room, 3320 Old Garner Road, Raleigh, NC.

Reason for Proposed Action: Amends the licensing fee structure to conform to changes set forth in Senate Bill 340 which was ratified and became effective on July 15, 1992 and which made amendments to the Alarm Systems Licensing Act.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until November 14, 1992. Written comments must be delivered or mailed to: James F. Kirk, Alarm Systems Licensing Board, 3320 Old Garner Road, P.O. Box 29500, Raleigh, NC 27626-0500.

Editor's Note: This Rule was filed as a temporary rule effective October 6, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 11 - N. C. ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

.0203 FEES FOR LICENSES

(a) Application license fees are as follows:

(1) ~~Seventy five dollars (\$75.00)~~ One hundred fifty dollars (\$150.00) non-refundable initial application fee;

(2) ~~Twenty five dollars (\$25.00)~~ non-refundable branch office application fee;

(3) ~~(2) One hundred fifty dollars (\$150.00) annual~~ Three hundred fifty dollars (\$350.00) biannual fee for a new or renewal license;

(4) ~~(3) Fifty dollar (\$50.00)~~ One hundred fifty dollars (\$150.00) branch office license fee;

(5) ~~(4)~~ (4) One hundred dollars (\$100.00) late renewal fee to be paid in addition to the renewal fee if the license has not been renewed on or before the expiration date.

(b) Fees shall be paid in the form of a check or money order made payable to the Alarm Systems Licensing Board.

Statutory Authority G.S. 74D-7.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10B .0115.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 7:00 p.m. on November 5, 1992 at the Macon County Courthouse, 5 West Main Street, Franklin, NC

28734.

Reason for Proposed Action: *To restrict the shining of artificial lights in Macon County*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 15, 1992 to November 14, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**CHAPTER 10 - WILDLIFE RESOURCES
AND WATER SAFETY
SUBCHAPTER 10B - HUNTING AND
TRAPPING**

**SECTION .0100 - GENERAL
REGULATIONS**

**.0115 SHINING LIGHTS IN DEER
AREAS**

(a) It having been found upon sufficient evidence that certain areas frequented by deer are subject to substantial unlawful night deer hunting, or that residents in such areas have been greatly inconvenienced by persons shining lights on deer, or both, the shining of lights on deer in such areas is limited by Paragraphs (b) and (c) of this Rule, subject to the exceptions contained in Paragraph (d) of this Rule.

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Beaufort -- entire county;
- (2) Bladen -- entire county;
- (3) Brunswick -- entire county;
- (4) Camden -- entire county;
- (5) Chowan -- entire county;
- (6) Currituck -- entire county;
- (7) Duplin -- entire county;
- (8) Franklin -- entire county;
- (9) Gates -- entire county;
- (10) Greene -- entire county;
- (11) Hertford -- entire county;
- (12) Hoke -- entire county;
- (13) Hyde -- entire county, except that part of the county described in Paragraph (c) of this Rule;

- (14) Jones -- entire county;
- (15) Lenoir -- entire county;
- (16) Martin -- entire county;
- (17) Nash -- entire county;
- (18) Pamlico -- entire county;
- (19) Pasquotank -- entire county;
- (20) Pender -- entire county;
- (21) Perquimans -- entire county;
- (22) Pitt -- entire county;
- (23) Richmond -- entire county;
- (24) Sampson -- entire county;
- (25) Tyrrell -- entire county;
- (26) Vance -- entire county;
- (27) Wake -- entire county;
- (28) Warren -- entire county;
- (29) Washington -- entire county;
- (30) Wayne -- entire county.

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Alamance -- entire county;
- (2) Alexander -- entire county;
- (3) Alleghany -- entire county;
- (4) Anson -- entire county;
- (5) Ashe -- entire county;
- (6) Avery -- that portion south and east of Highway 221;
- (7) Burke -- entire county;
- (8) Cabarrus -- entire county;
- (9) Caldwell -- entire county;
- (10) Caswell -- entire county;
- (11) Catawba -- entire county;
- (12) Chatham -- entire county;
- (13) Clay -- entire county;
- (14) Cleveland -- entire county;
- (15) Cumberland -- entire county;
- (16) Davidson -- entire county;
- (17) Davie -- entire county;
- (18) Durham -- entire county;
- (19) Edgecombe -- entire county;
- (20) Forsyth County -- entire county;
- (21) Gaston -- entire county;
- (22) Granville -- entire county;
- (23) Guilford -- entire county;
- (24) Halifax -- entire county;
- (25) Harnett -- entire county;
- (26) Henderson -- entire county;
- (27) Hyde -- that part bounded on the north by a line running parallel with and 1000 yards in a northward direction from that part of SR 1304 that leads from Hodges' Fork to Rose Bay, on the east by the Mattamuskeet National Wildlife

Refuge boundary, on the southeast by US 264, and on the west and southwest by a line running parallel with and 1000 yards in a west or southwest direction from the centerline of SR 1304;

- (28) Iredell -- entire county;
- (29) Johnston -- entire county;
- (30) Lee -- entire county;
- (31) Lincoln -- entire county;
- (32) Macon -- entire county;
- (32) (33) McDowell -- entire county;
- (33) (34) Mecklenburg -- entire county;
- (34) (35) Mitchell -- entire county;
- (35) (36) Montgomery -- entire county;
- (36) (37) Northampton -- entire county;
- (37) (38) Orange County -- entire county;
- (38) (39) Person -- entire county;
- (39) (40) Polk -- entire county;
- (40) (41) Randolph -- entire county;
- (41) (42) Robeson County -- entire county;
- (42) (43) Rockingham -- entire county;
- (43) (44) Rowan -- entire county;
- (44) (45) Rutherford -- entire county;
- (45) (46) Scotland -- that part lying west of US 401 north of Laurinburg and north of US 74 west of Laurinburg;
- (46) (47) Stanly -- entire county;
- (47) (48) Stokes -- entire county;
- (48) (49) Surry -- entire county;
- (49) (50) Transylvania -- entire county;
- (50) (51) Union -- entire county;
- (51) (52) Watauga -- entire county;
- (52) (53) Wilkes -- entire county;
- (53) (54) Yadkin -- entire county;
- (54) (55) Yancey -- entire county.

(d) Paragraphs (b) and (c) of this Rule shall not be construed to prevent:

- (1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;
- (2) the necessary shining of lights by landholders on their own lands;
- (3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or
- (4) the use of lights by campers and others who are legitimately in such areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights.

Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, Ch. 410; S.L. 1981 (Second Session 1982), Ch. 1180.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Chiropractic Examiners intends to adopt rule cited as 21 NCAC 10 .0206, and amend rule(s) cited as 21 NCAC 10 .0205.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at 7:30 a.m. on November 14, 1992 at the Pinehurst Hotel, Pinehurst, N.C.

Reason for Proposed Action:

21 NCAC 10 .0205 is being amended to increase professional continuing education requirements.

21 NCAC 10 .0206 is being adopted to satisfy new statutory certification requirements.

Comment Procedures: Written comments may be sent to the Board for 30 days after publication. The Board's mailing address is P.O. Box 312, Concord, NC 28025. Oral comments will be received at the public hearing.

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

SECTION .0200 - PRACTICE OF CHIROPRACTIC

.0205 RENEWAL OF LICENSE

(a) General. The renewal, cancellation and restoration of a license are governed by G.S. 90-155, which statute is herewith incorporated by reference in accordance with G.S. 150B-14(c).

(b) Renewal Application Form. Annual application for renewal of license shall be made on a form prescribed and furnished by the Board. Any changes in a licensee's name, address, professional specialty or employment shall be noted on the Renewal Application Form.

(c) Continuing Education. The licensee shall state on the Renewal Application Form the name, date, sponsor and duration of all educational sessions attended by him during the preceding year.

- (1) As used in G.S. 90-155, one "day" of continuing education shall be defined as ~~six~~ 12 hours.
- (2) Evidence of attendance shall be in the form of written certification from the sponsoring body.
- (3) Any licentiate seeking a hardship waiver of the continuing education requirement shall make application on a separate form provided by the secretary upon request.

(d) **Renewal Fee.** A renewal fee in the maximum amount allowed by statute shall be paid by each licentiate applying for renewal.

(e) **Restoration of Cancelled License: Evidence of Proficiency.** In order to provide evidence of proper proficiency, any former licentiate whose license has been cancelled due to non-compliance with G.S. 90-155 must be re-examined and must pay the application fee prescribed in 21 NCAC 10 Rule .0202(d) to cover the cost of re-examination. Payment of the application fee does not constitute payment of the statutory reinstatement fee.

Statutory Authority G.S. 90-155; 150B-14.

.0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) In order to be certified competent pursuant to G.S. 90-143.2, a person employed in a chiropractic office whose duties include the production of x-rays or other diagnostic images must:

- (1) Complete a Board-approved course in radiologic technology at least 50 hours in length and taught by an instructor who is a member of the radiology faculty at a college accredited by the Council on Chiropractic Education; and
- (2) Pass a proficiency examination administered by or under the authority of the Board of Examiners.

(b) Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (a) of this Rule.

(c) A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. Any person whose initial certificate expires less than 12 months after issuance shall not be required to obtain continuing education until entering the

second year of certification.

Statutory Authority G.S. 90-143.2.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rule cited as 21 NCAC 32B .0309.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 9:00 a.m. on November 2, 1992 at the NC Board of Medical Examiners, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: To allow the Assistant Executive Secretary to conduct personal interviews for licensing.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before October 16, 1992, to the following address: Administrative Procedures, NC Board of Medical Examiners, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0300 - LICENSE BY ENDORSEMENT

.0309 PERSONAL INTERVIEW

To be eligible for license by endorsement of credentials, applicants must appear before the Executive Secretary, Assistant Executive Secretary, a Board member, an agent of the Board, or the full Board for a personal interview upon completion of all credentials.

Statutory Authority G.S. 90-13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to adopt rule cited as 21 NCAC 46 .2504, with changes from the proposed text noticed in the Register, Volume 6, Issue 19, page 1480.

The proposed effective date of this action is January 4, 1993.

Reason for Proposed Action: This adoption is necessary to ensure patients are adequately informed about their prescription medications.

Comment Procedures: Any person may file written submission of comments or argument at any time up to and including November 16, 1992. Comments should be mailed to the Board's address, P.O. Box 459, Carrboro, NC 27510.

CHAPTER 46 - BOARD OF PHARMACY

SECTION .2500 - MISCELLANEOUS PROVISIONS

.2504 PATIENT COUNSELING

(a) "Patient Counseling" shall mean the effective communication of information, as defined in this Rule, to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. This Rule shall apply to pharmacists and to registrants under G.S. 90-85.21. Specific areas of patient counseling shall include, but are not limited to:

- (1) name, description, and purpose of the medication;
- (2) route, dosage, administration, and continuity of therapy;
- (3) special directions for use by the patient; and
- (4) side effects or interactions that may be encountered which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur.

(b) An offer to counsel shall be made on new or transfer prescriptions by the pharmacist or registrant at the time the prescription is dispensed to the patient or caregiver. The offer shall be made orally and in person, or through access to a telephone service at no charge to the patient. Profes-

sional judgment shall be exercised in determining whether or not to offer counseling for prescription refills. No offer to counsel shall state or imply that receiving counseling will involve extra delay, additional cost, or other inconvenience.

(c) In order to counsel patients effectively, a reasonable effort shall be made to obtain, record, and maintain, if significant, patient information, including, but not limited to:

- (1) name, address, telephone number;
- (2) date of birth (age), gender;
- (3) medical history:
 - (A) disease state(s),
 - (B) allergies/drug reactions,
 - (C) current list of non-prescription and prescription medications and devices.

(d) Once patient information is obtained, this information should be reviewed before each prescription is filled or delivered, typically at the point-of-sale or point of distribution to screen for potential drug therapy problems due to:

- (1) therapeutic duplication;
- (2) drug-disease contraindication;
- (3) drug-drug interactions, including serious interactions with nonprescription or over-the-counter drugs;
- (4) incorrect drug dosage or duration of drug treatment;
- (5) drug-allergy interactions; and
- (6) clinical abuse/misuse.

(e) Unless refused by the patient or caregiver, patient counseling shall be provided as follows:

- (1) counseling shall be "face to face" by the pharmacist or registrant when possible or appropriate. If this is not possible, a reasonable effort shall be made to counsel the patient or caregiver;
- (2) alternative forms of patient information may be used to supplement patient counseling;
- (3) patient counseling, as described in this Rule, shall also be required for outpatient and discharge patients of hospitals, health maintenance organizations, health departments, and other institutions;
- (4) patient counseling, as described in this Rule, shall not be required for inpatients of hospitals or other institutions where a nurse or other licensed health care professional administers the medication(s); and
- (5) appropriate patient-oriented reference materials (i.e. USP-DI, Facts and Comparisons, Patient Drug Facts, etc.) shall

be maintained for use by the patient upon request.

(f) Pharmacies that distribute prescription medication by mail, and where the practitioner-pharmacist-patient relationship does not exist, shall provide counseling services for recipients of such medication, which shall include contracting with local pharmacists to provide patient counseling. The local pharmacists shall be sufficient in number and demographic distribution to provide available and adequate patient counseling. The contract between the pharmacy and the local pharmacist shall contain provisions for patient counseling consistent with this Rule, and shall provide for the exchange of patient medication records between the pharmacy and the local pharmacist.

(g) Records resulting from compliance with this Rule shall be maintained for three years in accordance with Section .2300 of this Chapter.

Authority G.S. 90-85.6; 90-85.21; 90-85.32; 42 U.S.C. 1396r-8(g).

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to adopt rules cited as 25 NCAC 1B .0107; 1N .0005 - .0007; amend rule cited as 25 NCAC 1N .0004; and repeal rule cited as 25 NCAC 1N .0001.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 9:00 a.m. on December 1, 1992 at the State Personnel Development Center, 101 W. Peace Street, Raleigh, N.C.

Reason for Proposed Action:

25 NCAC 1B .0107 - This adoption is necessary for the Office of State Personnel's implementation of the statutory requirements of G.S. 126-1A which defines the term "Career State Employee."

25 NCAC 1N .0001 - This Rule is proposed to be repealed in order to adopt and amend rules to conform to a new article that has been added to Chapter 143 of the General Statutes (Article 63-Sections 143-580-143-584) and the amendment

of Section 126-4(10).

25 NCAC 1N .0004 - This Rule is proposed to be amended to offer guidance and clarification to state agencies and universities in implementing a new Article that has been added to Chapter 143 of the General Statutes (Article 63-Sections 143-580-143-584) and the amendment of Section 126-4(10).

25 NCAC 1N .0005 - .0007 - These rules are proposed to be adopted to offer guidance and clarification to state agencies and universities in implementing a new Article that has been added to Chapter 143 of the General Statutes (Article 63-Sections 143-580-143-584) and the amendment of Section 126-4(10).

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Barbara A. Coward, Office of State Personnel, 116 W. Jones Street, Raleigh, N.C. 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0100 - GENERAL PROVISIONS

.0107 CAREER STATE EMPLOYEE CLASSIFICATION DESIGNATION

The term "career state employee" and the classes and positions covered by this term are defined in N.C.G.S. 126-1A. It is the responsibility of the Office of State Personnel, along with the agencies and universities to assign classes and positions to one of these definitions. Where the Office of State Personnel and the agencies/universities cannot agree on a designation, the State Personnel Commission shall have final decision making authority in assigning the position and/or class to the definition. Following the designation of all positions and classes, the Office of State Personnel shall submit a master list of such designations to the State Personnel Commission for approval by June of 1993.

Statutory Authority G.S. 126-1A; 126-4.

SUBCHAPTER IN - STATE EMPLOYEES
WORKPLACE REQUIREMENTS
PROGRAM FOR SAFETY AND HEALTH

.0001 PURPOSE

The purpose of the State Employees Workplace Requirements for Safety and Health Program is to accomplish the following:

- (1) Through training and education, the program will work to provide managers, supervisors and employees of North Carolina State Government with a firm understanding of the state's concern for: protecting employees from job related injuries or health impairment; preventing accidents and fires; planning for emergencies and emergency medical procedures; monitoring industrial hygiene; assuring adequate housekeeping and sanitation.
- (2) The program will work to utilize available resources within state government and elsewhere to inform and educate personnel in all areas of preventive health, safety, personal security, personal care and other individual responsibilities.
- (3) The program will develop appropriate requirements to meet these concerns and will provide guidelines for their implementation.

Statutory Authority G.S. 95-148; 126-4(5),(10); Executive Order No. 6.

.0004 PROGRAM ADMINISTRATION

(a) The State Personnel Director is responsible through designated staff for developing, implementing, and monitoring agency participation in programs for improving workplace safety and health, and university compliance with the State Employee Workplace Requirements Program for Safety and Health. The Director will establish lines of communication between state agencies and universities to refine and expand the workplace requirements for safety and health program. This is to be accomplished by providing consultative and support technical services through the Employee Safety and Health Division that include:

- (1) technical assistance in the design and development of agency program written safety and health programs and operative safety committees as well as request for assistance with assessment of specialized workplace hazards;
- (2) a systematic evaluation and periodic

inspection of state operations to ensure the identification and control of hazardous workplace environments and unsafe work practices which could endanger state employees;

- (3) industrial hygiene services for the smaller agencies;
- (4) development of Statewide maintenance of a State Employee Safety and Health Handbooks Handbook describing the responsibilities of participation by employees and outlining the basic rules for working safely in state government;
- (5) investigation of work-related fatalities and major lost workday injuries and illnesses to ensure that agencies and universities have program elements in place to control specific hazards;
- (6) coordination of training programs for designated safety and health officers through coordinated resources of the N.C. Department of Labor, the Department of Human Resources, the Department of Environment, Health, and Natural Resources, Department of Insurance, and the N.C. Industrial Commission;
- (7) maintenance of a statewide data information service for analyzing work-related injuries and illnesses and their related cost;
- (8) a systematic evaluation of state agencies and universities to ensure compliance with written program and safety committee requirements.

To assist the director, he shall appoint State Personnel Director, a State Steering Committee, to include composed of program staff of from state agencies and universities, who shall be appointed to recommend program changes, goals, and solutions to problems. Any additions or significant changes to the administrative or workplace requirements procedures will occur only after consultation with the State Steering Committee.

(b) Annually, the State Personnel Director shall prepare a report for the Governor, the State Personnel Commission, and all state agencies and universities which will assess the compliance with program achievements, recommend future changes, and include an analysis of injury and compensation statistics, requirements, committee effectiveness, recommended changes to enhance program, and a statistical analysis of work-related injuries and illnesses and compensation cost.

- (c) The State Personnel Commission shall

comply with the provisions set forth in G.S. 143-583.

~~(e) Every state agency shall have a Workplace Requirements Program for Safety and Health consistent with the State Personnel Commission's model program and its procedural requirements. Each agency head shall designate a safety and health officer to be responsible for implementing a workplace safety and health program within the agency and for developing special safety and health procedures or standards needed to meet unique or special situations within the agency. The agency program shall be in accord with the specific program standards and reporting requirements established by the State Personnel Director.~~

~~(d) Agencies with pre-existing safety and health programs will review their programs and make necessary modifications to conform with and complement the State Employees' Workplace Requirements Program.~~

~~(e) As required by G.S. 95-148, agency heads shall, after consultation with the Commissioner of Labor, make an annual report to the Commissioner on occupational accidents and injuries.~~

~~(f) Each agency shall form an internal steering committee to guide and assist the agency head and the designated safety and health officer in developing, implementing and evaluating the agency program.~~

~~(g) All supervisors and employees have safety and health responsibility. A supervisor is responsible for providing safe working conditions for each subordinate, knowing safety and health guidelines, reporting and investigating accidents, and advising management of any unsafe work environment or condition.~~

~~(h) Each state employee is responsible for conducting his or her own work in a safe manner to protect self and the public; for making recommendations to improve safety; and for immediately notifying the supervisor of any accident or injury.~~

Statutory Authority G.S. 95-148; 126-4(5)(10); 143-580 through 143-584; Executive Order No. 6 (1985).

.0005 STATE AGENCIES AND UNIVERSITIES' RESPONSIBILITIES

(a) Each state agency and university shall have a written State Employee Workplace Requirements Program for Safety and Health consistent with the State Personnel Commission's model program and its procedural requirements. Written components of the program shall describe at a minimum the

program requirements set forth in G.S. 143-582.

(b) Each state agency and university shall create safety and health committees. There shall be at least one safety and health committee in agencies and universities with less than 300 employees. Agencies and universities with 300 or more employees shall have a multilayered safety and health committee organizational structure designed to ensure employee involvement: a top level committee that is responsible for the agency wide policy issues and other committees that meet the requirements outlined in Rule .0006 of this Subchapter.

(c) The Safety and Health Committee shall have non-supervisory employee and management representatives. The number of management representatives shall not exceed the number of employee representatives. The terms of each representative shall be staggered to maintain the continuity of the Committee. The non-supervisory employee representative will be referred to as the Employee Safety and Health Representative. The Committee shall be composed of:

- (1) One Employee Safety and Health Representative where the average number of employees of the agency or university during the year was more than 10, but less than 50.
- (2) Two Employee Safety and Health Representatives where the average number of employees during the year was more than 50, but less than 100.
- (3) An additional Employee Safety and Health Representative for each additional 100 employees up to a maximum of six Employee Safety and Health Representatives.

(d) A state agency or university with significant field forces must ensure field operations are represented by a member(s) of that group.

(e) The agency or university Safety and Health Officer or designee serves as ex-officio member with voting rights on the Committee(s).

(f) The agency or university will establish a procedure by which Employee Safety and Health Representatives can be selected or appointed.

(g) The Chairman of the Committee may be appointed by the agency head/university chancellor or elected by the members. Secretarial services are to be provided to the Chairman to carry out his or her duties.

(h) Each state agency and university shall notify the Office of State Personnel, Division of Employee Safety and Health of any fatality or single accident resulting in three or more persons injured within 24 hours of the accident. A summary

investigation report and Death Claim Notice Form is to be filed within two weeks of knowledge of the death.

(i) Each state agency and university will provide a quarterly summary of accident/injury/illness data to the Office of State Personnel, Division of Employee Safety and Health. The data shall include, but not be limited to, employment information, occupational injuries/illnesses data, incidence rates, workers' compensation claims, expenditures and subrogation collected. Copies of the required forms may be found in Section Four of the North Carolina State Personnel Policy Manual.

(j) Each state agency and university shall use the uniform safety and health symbols adopted by the State Personnel Commission in communication and educational efforts involving components of the State Employee Workplace Requirements Program for Safety and Health. These symbols may be found in Section Four of the North Carolina State Personnel Policy Manual.

Statutory Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584; Executive Order No. 6 (1985).

.0006 COMMITTEE(S)' RESPONSIBILITIES

The Safety and Health Committee(s) shall perform the following functions as well as any other functions determined by the State Personnel Commission to be necessary for the effective implementation of the State Employees Workplace Requirements Program for Safety and Health:

- (1) Review all safety and health policies and procedures established by the agency or university.
- (2) Review incidents involving work-related fatalities, injuries, illnesses or near-misses.
- (3) Review employee complaints regarding safety and health hazards.
- (4) Analyze the agency or university's work injury and illness statistical records.
- (5) Conduct inspections of worksites at least annually and in response to complaints regarding safety or health hazards.
- (6) Conduct interviews with employees in conjunction with inspections of the workplace.
- (7) Review agency or university's training records to ensure compliance with regulatory training requirements.
- (8) Conduct meetings at least once every three months. Maintain written minutes

of such meeting and send copy to each committee member. Copy of minutes shall be posted in the appropriate workplace.

(9) Designate Employee Safety and Health Representative(s) to accompany representatives from regulatory agencies (i.e. NC Occupational Safety and Health Division, NC Department of Insurance, NC Division of Environmental Management) during safety and health inspections of the workplace.

(10) Make written recommendations on behalf of the Committee to the agency head or university chancellor.

Statutory Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584; Executive Order No. 6 (1985).

.0007 STATE EMPLOYEES' RESPONSIBILITIES

(a) Each supervisor is responsible for providing safe working conditions for each subordinate, knowing safety and health guidelines, reporting and investigating accidents and advising management of any unsafe work environment or condition.

(b) Each employee is responsible for conducting his or her own work in a safe manner to protect their self, fellow employees and the public; for making recommendations to improve safety and health in the workplace and for immediately notifying the supervisor of any accident involving injury, illness, or near-miss.

Statutory Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584; Executive Order No. 6 (1985).

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

Motor Fleet Management Division

1 NCAC 38 .0205 - Accident Reporting RRC Objection 09/17/92

AGRICULTURE

Gasoline and Oil Inspection Board .

2 NCAC 42 .0102 - Definitions	RRC Objection 08/20/92
Agency Revised Rule	Obj. Removed 08/20/92
2 NCAC 42 .0801 - Purpose and Applicability	RRC Objection 08/20/92
Agency Revised Rule	Obj. Removed 08/20/92

Structural Pest Control Division

2 NCAC 34 .0406 - Spill Control	RRC Objection 07/16/92
Agency Responded	No Action 08/20/92
2 NCAC 34 .0603 - Waivers	RRC Objection 07/16/92
Agency Responded	No Action 08/20/92
2 NCAC 34 .0902 - Financial Responsibility	RRC Objection 07/16/92
Agency Responded	No Action 08/20/92

ECONOMIC AND COMMUNITY DEVELOPMENT

ABC Commission

4 NCAC 2R .0702 - Disciplinary Action of Employee	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92
4 NCAC 2R .1205 - Closing of Store	RRC Objection 05/21/92
Agency Repealed Rule	Obj. Removed 06/18/92
4 NCAC 2S .0503 - Pre-Orders	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92

Departmental Rules

15A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts	RRC Objection 06/18/92
15A NCAC 1J .0302 - General Provisions	RRC Objection 06/18/92
15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	RRC Objection 06/18/92

Environmental Health

15A NCAC 18A .3101 - Definitions	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	06/18/92

Environmental Management

15A NCAC 2D .0538 - Control of Ethylene Oxide Emissions	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	08/20/92
15A NCAC 2D .1104 - Toxic Air Pollutant Guidelines	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	08/20/92
15A NCAC 2G .0601 - The Aquatic Weed Control Act	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	08/20/92
15A NCAC 2O .0302 - Self Insurance	RRC Objection	06/18/92

Health: Epidemiology

15A NCAC 19H .0402 - Documentary Evidence: Facts to be Established	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	08/20/92
15A NCAC 19H .0601 - Birth Certificates	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	06/18/92

Soil and Water Conservation

15A NCAC 6E .0007 - Cost Share Agreement	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	06/18/92

Wildlife Resources and Water Safety

15A NCAC 10E .0004 - Use of Areas Regulated	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	08/20/92

HUMAN RESOURCES**Aging**

10 NCAC 22R .0301 - Definitions	RRC Objection	07/16/92
Agency Revised Rule	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92

Day Care Rules

10 NCAC 46D .0305 - Administration of Program	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	06/18/92
10 NCAC 46D .0306 - Records	RRC Objection	06/18/92
Agency Revised Rule	Obj. Removed	06/18/92

Medical Assistance

10 NCAC 50A .0305 - Appeal Decision	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	08/20/92

Mental Health: General

10 NCAC 14C .1010 - Other Contracts	RRC Objection	08/20/92
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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/20/92</i>
<i>10 NCAC 14C .1115 - Funding Group Homes for Mentally Retarded Adults</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>10 NCAC 14M .0704 - Program Director</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

INSURANCE**Departmental Rules**

<i>11 NCAC 1 .0106 - Organization of the Department</i>	<i>RRC Objection</i>	<i>06/18/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

Multiple Employer Welfare Arrangements

<i>11 NCAC 18 .0019 - Description of Forms</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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Seniors' Health Insurance Information Program

<i>11 NCAC 17 .0005 - SHIP Inquiries to Insurers and Agents</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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LABOR**Occupational Safety and Health Act**

<i>13 NCAC 7C .0108 - Building Code</i>	<i>RRC Objection</i>	<i>09/17/92</i>
<i>13 NCAC 7C .0109 - Fire Prevention Code</i>	<i>RRC Objection</i>	<i>09/17/92</i>

LICENSING BOARDS AND COMMISSIONS**Dietetics/Nutrition**

<i>21 NCAC 17 .0014 - Code of Ethics for Professional Practice/Conduct</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

General Contractors

<i>21 NCAC 12 .0503 - Renewal of License</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/20/92</i>

REVENUE**Individual Income, Inheritance and Gift Tax Division**

<i>17 NCAC 3B .0401 - Penalties</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 3B .0402 - Interest</i>	<i>RRC Objection</i>	<i>08/20/92</i>

Individual Income Tax Division

<i>17 NCAC 6B .0107 - Extensions</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .0115 - Additions to Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .0116 - Deductions from Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .0117 - Transitional Adjustments</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .3406 - Refunds</i>	<i>RRC Objection</i>	<i>08/20/92</i>

STATE PERSONNEL

Office of State Personnel

25 NCAC 1E .1301 - Purpose	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1E .1302 - Policy	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1E .1303 - Administration	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Prgm	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1E .1305 - Donor Guidelines	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1E .1306 - Leave Accounting Procedures	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1H .0603 - Special Recruiting Programs	RRC Objection	05/21/92
Agency Repealed Rule	Obj. Removed	06/18/92
25 NCAC 1I .1702 - Employment of Relatives	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .1903 - Applicant Information and Application	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2401 - System Portion I: Recruitment, Selection, & Advancement	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2402 - System Portion II: Classification/Compensation	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2403 - System Portion III: Training	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2404 - System Portion IV: Employee Relations	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2405 - System Portion V: Equal Emp Oppty/Affirmative Action	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1I .2406 - System Portion VI: Political Activity	RRC Objection	07/16/92
Agency Revised Rule	Obj. Removed	08/20/92
25 NCAC 1J .1005 - Eligibility for Services	RRC Objection	05/21/92
Agency Revised Rule	Obj. Removed	06/18/92

TRANSPORTATION

Division of Highways

19A NCAC 2B .0164 - Use of Right of Way Consultants	RRC Objection	09/17/92
19A NCAC 2B .0165 - Asbestos Contracts with Private Firms	RRC Objection	08/20/92

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Anne R. Gwaltney, Milton H. Askew, Jr. and Anna L. Askew v. EHR and Pamlico County Health Department	89 DHR 0699	Reilly	07/17/92
Eleanor R. Edgerton-Taylor v. Cumberland County Department of Social Services	89 OSP 1141	Morrison	08/18/92
Annette Carlton v. Cleveland County Department of Social Services	90 OSP 0024	Chess	08/14/92
Janice Parker Haughton v. Halifax County Mental Health, Mental Retardation, Substance Abuse Program	90 OSP 0221	West	08/18/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Carolina Water Service, Inc. v. EHR, Division of Environmental Management	90 EHR 0415	West	09/11/92
CSX Transportation, Inc. v. Department of Environment, Health, & Natural Resources	90 EHR 0628	Reilly	07/17/92
Bruce Keeter v. Beaufort County Health Department	90 EHR 0666	Morgan	07/28/92
Christine Hill v. Crime Victims Compensation Commission	90 CPS 0876	Morgan	08/24/92
JHY Concord, Inc. v. Department of Labor	90 DOL 1421	Morgan	07/28/92
Lick Fork Hills, Inc., Marion Bagwell, President v. Department of Environment, Health, & Natural Resources	91 EHR 0023	Morgan	07/28/92
Albert J. Johnson v. N.C. Victims Compensation Commission	91 CPS 0038	Morgan	07/28/92
Frank Beal, T/A Wild Wild West v. Alcoholic Beverage Control Commission	91 ABC 0164	Morgan	09/10/92
William B. Holden v. Department of Environment, Health, & Natural Resources	91 EHR 0176	Morgan	08/18/92
Brenda P. Price v. North Carolina Central University	91 OSP 0219	Morrison	08/21/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0257	West	06/30/92
Kenneth E. Fletcher v. University of North Carolina at Greensboro	91 OSP 0315	Chess	09/15/92
Richard L. Gainey v. Department of Justice	91 OSP 0341	Becton	08/10/92
Wade Charles Brown, Jr. v. N.C. Crime Victims Compensation Commission	91 CPS 0345	Chess	07/08/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Jackie Bruce Edwards v. DHR, Western Carolina Center	91 OSP 0354	West	08/20/92
Central Transport, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0402	Morrison	09/25/92
Robert C. Howell v. Department of Correction	91 OSP 0407	Morgan	08/26/92
Charles E. Roe v. Department of Environment, Health, & Natural Resources	91 OSP 0520	Nesnow	07/23/92
Jerry J. Parker v. Department of Correction	91 OSP 0546	Morgan	08/26/92
Air-A-Plane Corporation v. Department of Environment, Health, & Natural Resources	91 EHR 0636	Nesnow	09/04/92
Lisa M. Reichstein v. Office of Student Financial Aid, East Carolina University	91 OSP 0662	Nesnow	06/24/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	91 DHR 0665	Chess	09/09/92
Bobby R. Graham v. DHR, Caswell Center	91 OSP 0695	Nesnow	09/21/92
DHR, Division of Facility Svcs, Child Day Care Section v. Mary Goodwin, Jean Dodd, D/B/A Capital City Day Care Center	91 DHR 0720	Morgan	07/30/92
Kenneth Helms v. Department of Human Resources	91 OSP 0729	Chess	07/15/92
Lloyd C. Neely v. Department of Correction	91 OSP 0756	Morgan	09/10/92
Alcoholic Beverage Control Commission v. Daniels Investments, Inc., t/a Leather & Lace - East 4205 Monroe Road, Charlotte, N.C. 28205	91 ABC 0799	Mann	07/14/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Zelma Babson v. Brunswick County Health Department	91 OSP 0804	Gray	08/14/92
ACT-UP Triangle (AIDS Coalition to Unleash Power Triangle, Steven Harris, and John Doe v. Commission for Health Services of the State of N.C., Ron Levine, as Assistant Secretary of Health and State Health Director for EHR of the State of N.C., William Cobey, as Secretary of EHR of the State of N.C., Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the N.C. EHR, Wayne Bobbitt, Jr., as Chief of the HIV/STD Control Branch of the N.C.EHR	91 EHR 0818	Becton	07/08/92
Jane C. O'Malley, Melvin L. Cartwright v. EHR and District Health Department Pasquotank- Perquimans-Camden-Chowan	91 EHR 0838	Becton	07/02/92
Cheryl Veronica McNeal v. Criminal Justice Education & Training Stds Comm	91 DOJ 0861	Morgan	09/22/92
Thomas E. Vass v. James E. Long, Department of Insurance	91 INS 0876	Morrison	08/14/92
William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	08/28/92
Olde Towne Partnership and Tryon Realty Co. v. EHR, Division of Coastal Management	91 EHR 0909	Morrison	09/16/92
Gerald R. Pruitt v. Department of Correction	91 OSP 0933	Gray	09/14/92
Jones Grading & Fencing, Inc. v. EHR, Solid Waste Management	91 EHR 0956 91 EHR 0324	Nesnow	09/28/92
Grotgen Nursing Home, Inc., Britthaven, Inc. v. Certificate of Need Section, Div of Facility Svcs, DHR	91 DHR 0964 91 DHR 0966	Nesnow	07/06/92
Anthony J. Carter v. DHR, Division of Social Services, CSE	91 CSE 0975	Nesnow	09/17/92
Ramona S. Smith, R.N. v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 DST 0984	Chess	06/18/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Jarrett Dennis Swearengin v. DHR, Division of Social Services, CSE	91 CSE 0986	Becton	09/14/92
Charles H. Yates, Power of Attorney for Ruth Yates v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 INS 1008	Reilly	08/21/92
Walter McGlone v. DHR, Division of Social Services, CSE	91 CSE 1030	Morrison	07/13/92
William Oscar Smith v. DHR, Division of Social Services, CSE	91 CSE 1042	Gray	07/24/92
William Watson v. DHR, Division of Social Services, CSE	91 CSE 1047	Becton	07/08/92
Robert D. Daniels Jr. v. DHR, Division of Social Services, CSE	91 CSE 1048	Morrison	08/27/92
Marie McNeill-Pridgen v. Department of Environment, Health, & Natural Resources	91 EHR 1059	Nesnow	07/17/92
Catawba Memorial Hospital v. DHR, Div of Facility Svcs, Certificate of Need Section and Frye Regional Medical Ctr. Inc. and Amireit (Frye), Inc. and Thoms Rehabilitation Hospital Health Services Corp. and Frye Regional Medical Ctr. Inc. and Amireit (Frye), Inc. v. DHR, Div of Facility Svcs, Certificate of Need Section and Thoms Rehabilitation Hospital Health Services Corp. and Catawba Memorial Hospital	91 DHR 1061 91 DHR 1087	Reilly	07/13/92
Edward R. Peele v. Sheriffs' Education & Training Stds. Commission	91 DOJ 1092	Morrison	08/18/92
Charles Lawton Roberts v. DHR, Division of Social Services, CSE	91 CSE 1097	Becton	09/14/92
William Torres v. Dept of Justice, Lacy H. Thornburg, Attorney General	91 DOJ 1098	Morrison	08/07/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Wade A. Burgess v. DHR, Division of Social Services, CSE	91 CSE 1114	Gray	07/01/92
Sammie L. Anderson v. DHR, Division of Social Services, CSE	91 CSE 1155	Mann	09/01/92
Harry L. King v. Department of Transportation	91 OSP 1162	Morgan	07/13/92
Gilbert Lockhart v. DHR, Division of Social Services, CSE	91 CSE 1178	Morrison	07/30/92
Isaac H. Galloway v. DHR, Division of Social Services, CSE	91 CSE 1190	Reilly	06/30/92
Russell A. Barclift v. DHR, Division of Social Services, CSE	91 CSE 1207 92 CSE 0275	Reilly	06/30/92
Barnabas D. Frederick v. DHR, Division of Social Services, CSE	91 CSE 1216	Nesnow	09/15/92
Herman Edward Main II v. DHR, Division of Social Services, CSE	91 CSE 1225	Nesnow	07/07/92
Albert Louis Stoner III v. DHR, Division of Social Services, CSE	91 CSE 1244	Gray	07/01/92
James E. Greene v. DHR, Division of Social Services, CSE	91 CSE 1245	Nesnow	07/14/92
Joseph W. Harris v. DHR, Division of Social Services, CSE	91 CSE 1247	Morgan	07/28/92
Celvis M. Burns v. DHR, Division of Social Services, CSE	91 CSE 1256	Mann	09/01/92
Rodney Powell v. DHR, Division of Social Services, CSE	91 CSE 1257	Morgan	07/29/92
Miles G. Griffin Jr. v. DHR, Division of Social Services, CSE	91 CSE 1270	Gray	08/27/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Gerald E. Anthony v. DHR, Division of Social Services, CSE	91 CSE 1274	Mann	09/01/92
Floyd L. Rountree v. DHR, Division of Social Services, CSE	91 CSE 1275	Morgan	07/22/92
Ruth Smith Hensley Shondales v. ABC Commission	91 ABC 1280	Chess	08/05/92
Rasoul Behboudi v. DHR, Division of Social Services, CSE	91 CSE 1313	Morrison	09/15/92
City-Wide Asphalt Paving, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1360	Chess	07/01/92
Alcoholic Beverage Control Commission v. Tre Three, Inc., T/A Crackers, Airport Rd., Rockingham, NC 28379	91 ABC 1372	Chess	07/07/92
Alcoholic Beverage Control Commission v. Rode Enterprises, Inc., T/A Jordan Dam Mini Mart	91 ABC 1388	Gray	07/30/92
Blythe M. Bragg v. University of North Carolina at Chapel Hill	91 OSP 1421	Nesnow	09/08/92
David W. Williams v. DHR, Division of Social Services, CSE	91 CSE 1423	Morrison	09/10/92
Donald R. Allison v. DHR, Caswell Center	91 OSP 1427	Reilly	06/30/92
Alfred Rees v. Department of Environment, Health, & Natural Resources	92 EHR 0004	Reilly	09/03/92
Mrs. S. v. Washington County Board of Education	92 EDC 0023	Mann	08/28/92
Rudolph Tripp v. Department of Correction	92 OSP 0024	Gray	08/27/92
Lavern Fesperman v. Mecklenburg County	92 OSP 0030	Chess	07/17/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Paul J. Nonkes v. Halifax County Health Dept. (Jeff Dillard, Sanitarian)	92 EHR 0058	Becton	08/28/92
Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	92 DHR 0071	Becton	08/19/92
Fred Jennings Moody Jr. v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0084	Chess	07/17/92
Ronnie Lamont Donaldson v. Sheriffs' Education & Training Standards Commission	92 DOJ 0092	Reilly	07/27/92
Vernice V. Battle v. Sheriffs' Education & Training Standards Commission	92 DOJ 0093	Becton	08/28/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0100	Chess	09/04/92
Marvin Helton, Jean Helton v. DHR, Division of Facility Services	92 DHR 0102	Chess	08/14/92
Leo Scott Wilson v. Department of Environment, Health, & Natural Resources	92 EHR 0112	Reilly	08/26/92
Peggy N. Barber v. The University of North Carolina at Chapel Hill	92 OSP 0120	Reilly	07/13/92
Alcoholic Beverage Control Commission v. John Wade Lewis, t/a Tasty Grill	92 ABC 0145	Nesnow	07/15/92
Licensing Board for General Contractors v. Wright's Construction, Inc. (Lic. No. 23065)	92 LBC 0172	Gray	07/31/92
Richard L. Banks v. Pasquotank-Perquimans-Camden-Chowan District Health Department (PPCC) & Department of Environment, Health, & Natural Resources	92 EHR 0175	West	08/25/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0186	Chess	09/04/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Ray Bryant v. Department of Labor, OSHA	92 DOL 0187	Nesnow	08/07/92
Herbert Hines Jr., H & H v. Alcoholic Beverage Control Commission	92 ABC 0189	Becton	07/22/92
William Stevenson v. Department of Correction	92 OSP 0201	Chess	09/03/92
Frances B. Billingsley v. Bd. of Trustees/Teachers & St Employees Retirement Sys	92 DST 0205	Morgan	08/18/92
Glenn E. Myers v. Department of Correction	92 OSP 0217	Reilly	09/14/92
Lawrence Neal Murrill T/A Knox, 507 1st St SW, Hickory, NC 28602 v. Alcoholic Beverage Control Commission	92 ABC 0220	Chess	08/03/92
Town of Denton v. Department of Environment, Health, & Natural Resources	92 EHR 0241	Reilly	07/30/92
Alcoholic Beverage Control Commission v. Byrum's of Park Road, Inc., T/A Byrum's Restaurant	92 ABC 0252	Gray	07/30/92
Alcoholic Beverage Control Commission v. Leo's Delicatessen #2, Inc., T/A Leo's #2	92 ABC 0255	Gray	07/30/92
North Topsail Water & Sewer, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0266	Morrison	08/12/92
Raymond O. and Rita Halle, and the Town of Boone v. EHR, Division of Land Resources	92 EHR 0267 92 EHR 0376	Gray	09/18/92
Henry Thomas Tart v. DHR, Division of Social Services, CSE	92 CSE 0283	Nesnow	09/15/92
Virginia Devenny v. The University of North Carolina at Charlotte	92 OSP 0301	Reilly	09/22/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Henry Lane, D/B/A Emerald Health Care Acute Care Ctr v. DHR, Div of Facility Services, Certificate of Need Section and Bowman-Richardson Health Care, Inc. D/B/A Wilkes Senior Village	92 DHR 0308	Gray	08/28/92
Azmi Sider, Midtown Mini Mart v. EHR, Division of Maternal and Child Health, WIC Section	92 EHR 0317	Nesnow	09/16/92
Gerald G. Strickland v. Crime Control and Public Safety	92 CPS 0320	Chess	09/10/92
Jonathan L. Fann v. U.N.C. Physical Plant, Herb Paul, Louis Herndon, Dean Justice, Bruce Jones	92 OSP 0363	Becton	08/19/92
Douglas A. Bordeaux v. Department of Correction	92 OSP 0378	Chess	07/10/92
Clifton R. Johnson v. O'Berry Center, Department of Human Resources	92 OSP 0381	West	07/08/92
Southeastern Machine & Tool Company, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0386	Becton	07/20/92
Louvenia Clark v. Edgecombe County Department of Social Services	92 OSP 0402	Reilly	08/21/92
Raleigh F. LaRoche v. Child & Family Services of Wake County	92 OSP 0409	Becton	08/24/92
Ellwin C. Wetherington Jr. v. DHR, Division of Social Services, CSE	92 CSE 0419	Morrison	09/28/92
Paul Reeves, Youth University Child Care v. Child Day Care Section, Division of Facility Svcs	92 DHR 0424	West	08/21/92
Mr. & Mrs. James C. Stanton v. Charlotte-Mecklenburg School System	92 EDC 0430	Nesnow	08/04/92
James Cooper Lewis v. Sheriffs' Education & Training Standards Commission	92 DOJ 0461	Reilly	09/15/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. 508 Investors, Inc., t/a Johnathon's Restaurant	92 ABC 0476	Nesnow	09/24/92
Jon David Amundson v. Davidson County Mental Health	92 OSP 0503	Becton	09/10/92
Northview Mobile Home Park v. Department of Environment, Health, & Natural Resources	92 EHR 0507	Reilly	07/13/92
Yolanda Lynn Bethea v. DHR, Division of Social Services, CSE	92 DCS 0513	Becton	08/14/92
Alice Hunt Davis v. Department of Human Resources	92 OSP 0526	West	07/16/92
Jimmy F. Bailey Sr. v. Department of State Treasurer, Retirement Systems Div	92 DST 0536	Morgan	08/18/92
Bramar, Inc., t/a Spike's v. Alcoholic Beverage Control Commission	92 ABC 0554	Mann	08/13/92
Grady Lockhart Jr. v. DHR, Division of Social Services, CSE	92 CSE 0565	Becton	09/28/92
Ralph J. Ogburn v. Private Protective Services Board	92 DOJ 0571	Nesnow	08/07/92
George M. Hagans v. DHR, (Cherry Hospital)	92 OSP 0583	Morgan	09/21/92
Gilbert Todd Sr. v. Public Water Supply Section	92 EHR 0586	Morrison	08/06/92
Candance Y. Johnson v. Division of Motor Vehicles	92 DOT 0589	Becton	08/24/92
John W. Surles v. N.C. Crime Victims Compensation Commission	92 CPS 0595	Reilly	07/13/92
Pamela Jean Gass v. DHR, Division of Social Services, CSE	92 DCS 0623	Morrison	08/14/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
J.W. Reed v. Department of Correction	92 OSP 0638	Morrison	08/11/92
Carson Davis v. Department of Correction	92 OSP 0650	Reilly	08/10/92
Luther Hall Clontz v. Western Carolina Center (NC of Human Resources)	92 OSP 0652	Becton	09/10/92
Private Protective Services Board v. Mark Andrew Perry	92 DOJ 0662	Becton	09/10/92
Stauffer Information Systems v. Department of Community Colleges and the N.C. Department of Administration and The University of Southern California	92 DOA 0666	West	07/08/92
Dortheia B. Marley v. Department of Correction	92 OSP 0667	West	09/28/92
Nancy J. Tice v. Administrative Off of the Courts, Guardian Ad Litem Svcs	92 OSP 0674	Morrison	08/11/92
L. Stan Bailey v. Chancellor Moran and UNC-Greensboro	92 OSP 0679	West	07/10/92
Arnold McCloud T/A Club Castle v. Alcoholic Beverage Control Commission	92 ABC 0681	Morrison	07/25/92
Joyce Faircloth, T/A Showcase Lounge v. Alcoholic Beverage Control Commission	92 ABC 0713	Morrison	07/25/92
James B. Price v. Department of Transportation	92 OSP 0725	Mann	09/02/92
Edmonia Lang v. Carteret County Board of Education	92 OSP 0736	Mann	08/28/92
Larry Bruce High v. Alarms Systems Licensing Board	92 DOJ 0755 92 DOJ 0785	Nesnow	08/25/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Rosie W. Harrell v. Administrative Office of the Courts	92 OSP 0846	West	09/17/92
Robert Aiken v. Department of Correction	92 OSP 0872	Gray	09/25/92
Daniel N. Jones v. N.C. Victims Compensation Commission	92 CPS 0879	Chess	08/28/92

**UNIVERSITY OF NORTH
CAROLINA AT GREENSBORO,**
Respondent.

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RECOMMENDED DECISION

The Petitioner filed for a contested case hearing on April 5, 1991, in order to appeal the March 5, 1991 decision of the Respondent Agency to uphold the Petitioner's three-day suspension from work as an employee in the Physical Plant at the University of North Carolina at Greensboro (UNC-G), for personal conduct.

The Respondent contends that the Petitioner was suspended for three days without pay for just cause after he engaged in verbal and physical aggression with a department manager. The Petitioner contends that the Respondent lacked just cause to suspend him for three days without pay.

The appeal of Kenneth E. Fletcher, employee of University of North Carolina at Greensboro, was heard by Administrative Law Judge, Sammie Chess, Jr., on June 11, 1992, in High Point, North Carolina. The record closed on September 2, 1992, when the parties completed the filing of their proposed findings of facts and conclusions and final arguments.

For the Petitioner:

Kenneth E. Fletcher, Pro Se.
1407 Guyer Street
High Point, NC 27265

For the Respondent:

Anne J. Brown
Associate Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

For the Petitioner:

Kenneth E. Fletcher
Stan Bailey
Bob Lewis

For the Respondent:

C. Scott Willard
Harvey Saunders

Jack L. Colby
Ted White

ISSUES

1. Did Respondent have just cause to suspend Petitioner for three days without pay for personal misconduct?

STATUTES AND RULES INVOLVED

North Carolina General Statute Section 126-35; 25 North Carolina Administrative Code, r. 01J:0608.

SUMMARY OF DECISION

Petitioner's three-day suspension without pay for personal misconduct should be vacated, and Petitioner should receive counseling as did his supervisor. It was the improper conduct of Petitioner's supervisor that set into motion the events complained of on August 29, 1990.

EXHIBITS

Editor's Note: The list of Exhibits has been omitted from publication. A copy may be obtained by contacting the Office of Administrative Hearings.

Based on a preponderance of the substantial evidence admitted into the record of this case, the Administrative Law Judge makes the following:

FINDINGS OF FACTS

1. The Petitioner arrived at work on August 29, 1990, at approximately 7:55 A.M. The time clock showed 8:02 A.M. when Petitioner punched in. He is due to punch in before 8:00 A.M.

2. At approximately 10:30 A.M. on August 29, 1990, Petitioner went to his supervisor, Harvey Saunders, to complain about the time clock running seven minutes fast.

3. Petitioner told him someone needed to get the time clock fixed once and for all. His supervisor replied "Quit your bitching, if you would come to work on time you wouldn't have this problem."

4. The problem with the time clock has been going on for a long time. Petitioner is docked fifteen minutes if the clock indicates he clocked in at 8:02 A.M. rather than 8:00 A.M. or before. Clocking in late, after 8:00 A.M. affects Petitioner's rights and privileges as an employee.

5. Petitioner made many complaints about the defective clock. He also made many requests to get the clock fixed. Many of these complaints and requests were made to Mr. Harvey Saunders, his supervisor.

6. During the course of this conversation Petitioner disagreed with the supervisor's statement to the effect that the clock was maintained regularly and the supervisor asked Petitioner "Are you calling me a liar?". Petitioner responded by saying, "Yes you're a fucking liar?".

7. That Harvey Saunders' response to a legitimate concern was inappropriate.

8. That the language and tone used by Harvey Saunders was demeaning, abusive, and

aggressive, with a natural tendency to arouse hostility in the person addressed.

9. Petitioner continued to insist that Mr. Saunders "fix" the clock, which had been "off" for years. Petitioner had discussed this problem with Harvey Saunders and Stan Bailey on a number of occasions and also Mr. Jack Colby about a year ago. The problem still had not been solved.

10. From the record as a whole, there is no feeling that the events would have occurred, but for the remarks and attitude of Harvey Saunders. Petitioner did not approach Harvey Saunders in a hostile manner, but rather to urge that something be done about the clock.

11. Petitioner's conduct, though inappropriate and not to be condoned, was precipitated by the conduct of his supervisor.

12. Harvey Saunders and Kenneth Helms shook hands the next day and apologized to each other and things are back to normal between them.

13. Petitioner would benefit from counseling.

Based upon the foregoing findings of fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Petitioner was a permanent State employee at the time of his three-day suspension. Because he has alleged that Respondent lacked just cause for his suspension, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a recommendation to the State Personnel Commission which shall make the final decision in the matter. North Carolina General Statutes 126-35, 126-37, 126-39, 150B-23 and 150B-36.

2. North Carolina General Statute 126-35 provides, in part, "that no permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. "Where just cause is an issue, the Respondent bears the ultimate burden of persuasion. A just cause issue carries both substantive and procedural questions. Causes for dismissal fall into two (2) categories: (1) causes relating to performance of duties, and (2) causes relating to personal conduct detrimental to State service.

3. Respondent has not met its burden of showing just cause for suspending Petitioner for three days without pay for personal misconduct. The record shows that the supervisor, also subject to the APA, was equally responsible, if not more, received only counseling.

4. Office of State Personnel rule, 25 NCAC r. 01J.0608 (a) (August 1991), provides, in pertinent part as follows:

Employees may be dismissed, demoted, suspended or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee.

5. The Respondent Agency's three-day suspension of Petitioner versus Harvey Saunders getting counseling amounts to treating parties differently who are subject to the same APA rules. In doing so, the agency acted erroneously, failed to use proper procedure, and acted arbitrarily in violation of North Carolina General Statute Section 150B-23.

6. Petitioner approached his supervisor, Harvey Saunders, with a legitimate concern and had a right to expect a proper attitude and response from him. The complaint was one that was within his area of supervision.

Based on the above, Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

1. That Petitioner's three-day suspension for personal conduct be vacated;
2. That Petitioner should receive counseling, as did his supervisor.
3. That Petitioner is entitled to recover back pay for the three days of suspension rendered against him;
4. That the Petitioner's personnel record be cleared and any new entry should reflect an adjustment which indicates discipline not to exceed counseling.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 15th day of September, 1992.

Sammie Chess, Jr.
Administrative Law Judge

4. At that time, it was anticipated that the rinsate generated could be discharged to the Aurora sewer system pursuant to promising conversations with Aurora town officials.
5. Thereafter in March 1990, Central made a formal request to the Town of Aurora, for Aurora to accept Central's wastewater from the truck wash.
6. In August of 1990, the Town of Aurora declined to allow Central to hook onto its municipal system.
7. Central's addition to the Town of Aurora's system would have triggered a pretreatment program start-up by Aurora, incurring substantial additional costs.
8. Central then planned a facility in Aurora, on property it acquired, in which rinsate could be captured in a sump, pumped into a tank truck and taken to a facility approved by the State of South Carolina where it would be used as process water at the Giant Cement Company facility in Harleyville, South Carolina.
9. On March 20, 1991, Central applied for a pump and haul permit from Respondent.
10. The pump and haul application notes that the duration of the request was, "Until Town of Aurora Sewer can accept Central Transport wastewater. Estimated 2-3 years. Request waiver of 6 month limit."
11. The last line of the application reads, "I will undertake all actions necessary to eliminate pump and haul activities on or before the expiration date of any permit issued." Central crossed out this last line and substituted the following, "I will undertake all actions necessary to eliminate pump and haul activities when Aurora sewer access becomes available."
12. On April 11, 1991, Respondent denied Petitioner's request for a pump and haul permit because the proposed permit life was in excess of the maximum six (6) months established for pump and haul permits and because there was no alternative plan for waste disposal at the conclusion of the six (6) months.
13. Petitioner filed a petition for contested case hearing on May 7, 1991.
14. Respondent has been issuing pump and haul permits for almost twenty (20) years. Approximately ten (10) of the approximately fifty (50) pump and haul permit applications received annually are denied because of the same two (2) conditions mentioned herein.
15. Respondent considers its pump and haul permit program to be a part of its non-discharge permit program. At the time of denial, Petitioner's non-discharge permit program regulations were found in 15A NCAC 2H .0200. Permit application fees and permit application required supporting documentation for non-discharge permits are found in 15A NCAC 2H .0205(c)(5) and (d)(1) respectively.
16. Pump and haul operations are unacceptable on a long-term basis due to, among other things, spillage during transporting of waste.
17. Petitioner's March 20, 1991, permit application lists the material being handled in the operation as "industrial wastewater."
18. At the time of denial, 15A NCAC 2H .0200 contained no references whatsoever to pump and haul permits with respect to decision-making criteria. At the time of denial, the two (2) denial conditions had not been adopted by formal APA rule-making procedure. On June 1, 1992, Respondent proposed additions to 2H .0200 which for the first time contained a specific reference to pump and haul permits.

19. The six (6) month maximum and alternative method of disposal requirements are permit conditions which the EMC, and by delegation, the Director, are authorized to include in permits per G.S. 143-215.1(a)'s ... "with such conditions, if any, as are prescribed by such permit..."

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Because the denial conditions had not been adopted and promulgated by formal APA rule-making procedure the Respondent could not use them as the bases for denying Petitioner's application.
2. Pursuant to G.S. 143-215.1(a), Respondent could and should have approved Petitioner's application and issued a permit on condition that it would expire within six months or whenever a permanent on-site wastewater treatment and disposal system was secured, whichever occurred first.

Based on the above Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the decision of the Respondent to refuse to issue Petitioner a Pump and Haul permit be reversed, and that a permit be issued on the condition it will expire within six months or whenever a permanent on-site wastewater treatment and disposal system is secured, whichever occurs first.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health and Natural Resources.

This the 25th day of September, 1992.

Fred G. Morrison Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 1421

BLYTHE M. BRAGG,
Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL,
Respondent.

RECOMMENDED DECISION

The above-captioned hearing was heard before Dolores O. Nesnow, Administrative Law Judge, on May 15 and May 29, 1992, in Chapel Hill, North Carolina.

APPEARANCES

For Petitioner: William R. Morris, Jr., Esq.
Attorney At Law
157 1/2 E. Franklin Street
Chapel Hill, North Carolina 27514
Attorney for Petitioner

For Respondent: Barbara A. Shaw
Assistant Attorney General
N. C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
Attorney for Respondent

ISSUES

1. Did the Respondent have just cause to dismiss the Petitioner for personal misconduct?
2. Did the Respondent follow the proper procedure in dismissing Petitioner effective April 11, 1992?
3. Did the reinstatement of Petitioner with full back pay to her former position (until she was dismissed effective December 18, 1991) fully compensate her for any alleged or actual error in the dismissal process effective April 11, 1991?

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 126-35
N.C. Admin. Code, tit. 25, r. 1B .0400 et seq.
N.C. Admin. code, tit. 25, r. 1B .0503
UNC Staff Personnel Administration Guide (SPAG) 37 and 38

STIPULATION AGREEMENTS

The Petitioner was a permanent State employee and was subject to the provisions of the State Personnel Act.

Editor's Note: List of exhibits has been omitted from publication in the Register.

WITNESSES

For Petitioner

George M. Kingman, Director of Administration, Psychiatry Department
Blythe M. Bragg, Petitioner

For Respondent

David S. Janowsky, Professor & Chairman, Department of Psychiatry
William G. Richardson, Director of Computer Support Services
Thomas C. Gray, Assistant Director of Computer Support Services
Kelly Collier, Accounting Supervisor, Psychiatry Business Office
Shirley Morter, Administrative Assistant to Dr. Janowsky
Malinda Marsh, Administrative Secretary, Center for Alcohol Studies
Alan Reberg, Business Manager, Psychiatry Department

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner, Blythe Bragg, a white female, began working for the Respondent, University of North Carolina at Chapel Hill, during March of 1976.
2. By March of 1991, Petitioner held the position of Administrative Assistant II, a supervisory position, in the Department of Psychiatry.
3. In the Spring of 1991, the Psychiatry Department consulted with the University's Computer Support Services to begin an updating of the Psychiatry Department's computer systems.
4. It was determined that a contract computer employee ("consultant") should be hired to work in the Psychiatry Department in liaison with Computer Support Services.
5. A young, black male was hired and began working in the Psychiatry Department.
6. During the time he was there, the "consultant" made advances toward one or more of the female employees, which advances included a derogatory remark to Petitioner on one occasion.
7. Petitioner determined that the "consultant" must be fired and she, in fact, fired him.
8. Two of the employees with Computer Support Services, Tom Gray and William Richardson, having learned that the employee was fired, became concerned about the progress of the project in which they were involved.
9. Mr. Gray and Mr. Richardson, both white males, came to the Psychiatry Department to talk with Petitioner and find out when a new "consultant" would be hired so that the project could continue.
10. The Petitioner met with them but spoke only briefly about the project at which point she told them to talk to Kelly Collier, one of Petitioner's employees. Ms. Collier is a white female.

11. Mr. Gray and Mr. Richardson then left Petitioner's office and went to Ms. Collier's office.

12. While the two men were meeting with Ms. Collier, Petitioner came into the office and sat down.

13. Mr. Gray and Mr. Richardson attempted to continue the meeting and discussed the dismissal of the original "consultant" and the plans for hiring a second "consultant."

14. During these discussions, Petitioner abruptly stated, "I'm glad that nigger is gone; he acts like he just came out of the jungle and talks like he has a mouth full of mush."

15. Mr. Gray and Mr. Richardson testified that they heard this statement during the meeting in Kelly Collier's office.

16. Ms. Collier testified that she heard the Petitioner use the word "nigger" during the meeting.

17. Petitioner testified that she does not remember making any such statement.

18. The remark was subsequently reported to the Chairman of the Psychiatry Department, Dr. David Janowsky. Dr. Janowsky began investigating the allegation by talking with all those concerned, including Petitioner.

19. Dr. Janowsky asked his Administrative Assistant, Shirley Morter, and Malinda Marsh, a previous Business Manager in the Department of Psychiatry, to look into the complaint which had been made.

20. Respondent's policy, as stated in the University's Staff Personnel Administrative Guide (SPAG) 38, provides:

The University intends that each Staff employee be treated with respect. Each Staff employee is responsible for treating other University associates with respect. He or she also is responsible for carrying out his or her assigned duties in a responsible manner. Each Staff employee is expected to maintain reasonable conduct and performance throughout University employment.

21. SPAG 38.2.J also provides that conduct and performance which interfere with University goals includes "using excessive or abusive, profane, obscene or derogatory language".

22. During the course of the investigation, Dr. Janowsky met with Petitioner and informed her of the allegation. Petitioner stated that she didn't know if she made the statement. She also stated that she had not made the remark and that the allegation was a conspiracy among the three employees who asserted that she had.

23. On April 9, 1991, Dr. Janowsky and Ms. Morter spoke with Petitioner and informed her that she was being suspended pending completion of the investigation.

24. After the investigation was complete, a predissmissal conference was conducted on April 11, 1991, at which Ms. Morter, Collin Rustin, the Human Relations Officer, and Malinda Marsh were present.

25. Petitioner denied making the remark and said that Bill Richardson from Computer Services, was "best friends" with the fired employee.

26. Mr. Richardson and Mr. Gray testified, and it is found as fact, that they did not know the fired employee personally.

27. After the predismisal conference, the decision was made to terminate the Petitioner's employment.

28. Ms. Marsh and Ms. Morter drafted the April 11, 1991 Dismissal letter which stated:

"Based on our investigation and our pre-dismissal meeting, which was held today, regarding your alleged violation of University and State regulations on racial slurs and epitaphs (sic), our investigation gives us reason to believe these actions did occur. You are, therefore, relieved of your duties as an employee in the Department of Psychiatry effective Friday, April 11, 1991. You have the right to appeal this decision."

29. Mr. Rustin reviewed the dismissal letter and approved it.

30. Petitioner appealed this dismissal through the internal grievance procedure and at Step III the Grievance Panel concluded that the dismissal letter of April 11, 1991, did not indicate the Petitioner's appeal rights, did not provide notice to the Petitioner allowing her five working days from the date of receipt of the letter to respond to the proposed dismissal, and did not inform her that the dismissal would become effective on the date specified in the letter in the absence of any response.

31. Petitioner was not represented by counsel during the course of this agency-level grievance.

32. Chancellor Paul Hardin reviewed the findings of the Grievance Panel and decided that he would accept in part the Panel's recommendation and reject it in part.

33. Chancellor Hardin agreed with the Panel's findings that the April 1991 Dismissal letter was defective in failing to indicate appeal rights, failing to provide notice of five days to respond, and failing to provide notice that the discharge would become effective on a date specific.

34. Chancellor Hardin did not adopt the findings that the letter was defective because it did not have prior approval by Employee Relations and it did not list the specific reasons in numerical order.

35. Chancellor Hardin noted that this dismissal occurred during a time when an administrative reorganization was occurring and the Employee Relations functions of the University were being merged with the Human Resources Division. He also noted that there was only a single incident at issue and failing to number a single issue was not a defect.

36. On December 3, 1991, after the Step III Grievance Panel report, Chancellor Hardin wrote Petitioner informing her of this decision.

37. Chancellor Hardin, in that letter, informed Petitioner that he adopted the recommendation that Petitioner be reinstated with back pay and further stated that "Thereafter the Department may elect upon reviewing Ms. Bragg's case again to retain her or to initiate steps to discharge her again. If they do, she may of course appeal the discharge."

38. Consequently, effective December 10, 1991, Respondent reinstated the Petitioner to her former position with full back pay.

39. Simultaneously with the notice of reinstatement, Respondent invited Petitioner to attend a second predismisal conference on December 10, 1991, with her supervisors, Mr. Alan Reberg, who had become the Business Manager of the Psychiatry Department in September of 1991, and Dr. Janowsky.

40. On December 10, 1991, the Respondent held another predismisal conference and the Petitioner was given another opportunity to respond to the charge against her. Petitioner categorically denied making the remark.

41. After this second predismissal conference, the Respondent concluded that the Petitioner had made a derogatory racial statement in the presence of at least three other employees. Consequently, the Respondent informed Petitioner she was being dismissed for personal misconduct, effective December 18, 1991.

42. N.C. Gen. Stat. 126-35 provides that no permanent State employee shall be discharged without first being furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employees' appeal rights.

43. 25 NCAC 1B .0421(b) provides that the State Personnel Commission (SPC) may award full or partial back pay regardless of whether reinstatement is ordered.

44. 25 NCAC 1B .0414 provides, in pertinent part, that attorney's fees may be awarded where the grievant has been awarded back pay from a dismissal.

45. 25 NCAC 1B .0431 provides in pertinent part that the SPC shall order reinstatement from dismissal "only upon a finding of lack of substantive just cause."

46. 25 NCAC 1B .0432 provides that failure to give written notice of appeal rights is deemed a procedural violation and its sole remedy is an extension of time within which to file an appeal.

47. 25 NCAC 1B .0432 further provides that failure to give specific reasons is a procedural violation and the SPC may award back pay, attorney's fees or both for such service of time as the Commission determines appropriate.

48. 25 NCAC 1J .0503 provides in pertinent part that departmental procedures may vary to provide greater safeguards for employees or to reflect the structure and need of the agency.

49. SPAG 37.2.d. provides that:

The University will set aside any discharge...without respect to its merits - when such action is taken without the Item 2C approval and hearing process.

50. SPAG 37.2.c provides:

c. Discharge or Disciplinary Suspension Without Pay can be effected only after advance approval by the Assistant Personnel Director - Employee Relations or the Employee Relations Officer (or, in their absences, the University Personnel Director). This process includes a Pre-Discharge or Pre-Suspension Hearing as outlined in Attachment 1, Item 4c or 5c respectively. (Item 5c relates to suspension without pay and is not pertinent to the matter at hand).

51. SPAG 37, Attachment 1, Item 4c, provides:

c. If the Employee Relations representative and the operating department representative agree that it is appropriate to propose discharge, these parties then meet with the employee in a Pre-Discharge Hearing. In this, the employee is notified of the specific actions or omissions that are the reasons for the proposed discharge and is given the opportunity to respond.

Based upon the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. It is concluded that the evidence is sufficient to prove that Petitioner made the statement at issue during the meeting in Ms. Collier's office and that that statement constitutes personal misconduct.
2. It is concluded that Respondent had just cause to dismiss Petitioner for personal misconduct.
3. It is concluded that the April 1991 dismissal letter was procedurally defective in that it did not state with specificity the acts or omissions for which Petitioner was being dismissed and did not give Petitioner her appeal rights.
4. The State Personnel rules provide that failure to give appeal rights is a procedural violation whose remedy is an extension of time within which to file an appeal. Since Petitioner appealed the April 1991 dismissal and exhausted all steps of the grievance procedure, no further remedy for that error is appropriate or necessary.
5. The State Personnel rules also provide that failure to give specific reasons for the adverse personnel action is a procedural violation and back pay, attorney's fees, or both may be awarded. Petitioner was not represented by counsel during the first internal grievance procedure and attorney's fees are, therefore, not at issue. Petitioner was awarded back pay at the third level of her grievance, which was the remedy to which she was entitled under these rules.
6. SPAG 37.2.d. provides that any discharge will be set aside without respect to its merits when that discharge is effected without the approval of the "Assistant Personnel Director-Employee Relations", the "Employee Relations Officer", or the "University Personnel Director."

Although Collin Rustin, the Human Relations Officer, verbally approved the dismissal of April 1991 and was, in fact, present at the April 1991, predissmissal conference, it appears that the grievance panel found this defective because the Human Relations Officer was not one of those named in SPAG 37.2.d.

Even though Chancellor Hardin did not adopt this finding because of the reorganization during the time of this grievance, he nevertheless awarded the remedy required for this violation, i.e. reinstatement.

This reinstatement gave rise to the unusual situation of an employee being reinstated long enough to give the Respondent the opportunity to conduct a second predissmissal conference and to issue a second letter of dismissal based upon the same violation.

Although the reinstatement and second dismissal was clearly a problematic remedy, Petitioner was notified in her letter from Chancellor Hardin that she was being reinstated with the understanding that the Psychiatry Department could conduct a second predissmissal conference immediately if they chose to do so. Petitioner, therefore, was not damaged by surprise or ambush when she returned to work.

7. Based upon a thorough and deliberate consideration of all the facts and conclusions discussed above, it is the opinion of the undersigned that Petitioner has received all the remedies to which she is entitled and the second dismissal does not entitle her to the award of any additional back pay or attorney's fees.

Based upon the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

That the State Personnel Commission affirm the dismissal of the Petitioner for personal misconduct, the decision of the Respondent to award back pay from April to December of 1991, and that no further remedy be awarded to Petitioner.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 8th day of September, 1992.

Dolores O. Nesnow
Administrative Law Judge

**OLDE TOWNE PARTNERSHIP AND
TRYON REALTY COMPANY,**

Petitioners

y.

RECOMMENDED DECISION

**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT, HEALTH AND
NATURAL RESOURCES, DIVISION
OF COASTAL MANAGEMENT,**

Respondent.

APPEARANCES

ISSUE

OPINION OF THE ADMINISTRATIVE LAW JUDGE

FINDINGS OF FACT

1. The Petitioners, Olde Towne Partnership and Tryon Realty Company, are a partnership and corporation, respectively, duly created and existing under the laws of the State of North Carolina in New Bern, Craven County, and own the subject matter property.
2. The Respondent, Division of Coastal Management, a Division of the Department of Environment, Health, and Natural Resources, administers, by delegation from the Coastal Resources Commission, the provisions of the Coastal Area Management Act of 1974, N.C.G.S. 113A-100 et seq., and the regulations permitted thereunder by the Coastal Resources Commission.
3. Petitioners' permit application was accepted on April 12, 1991, extended for review on June 26, 1991, and was denied on September 6, 1991.

4. On September 6, 1991, Roger N. Schecter, pursuant to authority of the Secretary of the Department of Environment, Health, and Natural Resources, denied the Petitioners' request for permits under the Coastal Area Management Act and the State Dredge and Fill Law to excavate an access channel, thus opening a pond and providing a marina basin in an area heretofore not connected to the estuarine waters of the State.
5. The Division of Environmental Management found that the state water quality standards would likely be violated should the pond be connected to the Olde Towne Lakes and the Trent River.
6. The Division of Marine Fisheries objected to the permit based upon concerns that the fluctuating dissolved oxygen levels could become a lethal trap for anadromous species.
7. The Wildlife Resources Commission expressed concern about the wetlands impacts and found that the mitigation plan was not acceptable since the project did not avoid the impact. This Commission did not consider Petitioners' mitigation plan.
8. The high-ground alternative suggested by the Wildlife Resources Commission was not available in this project. Said unavailability was due to lack of ownership, boating safety, and the fact that a navigation channel through this area created two separate right angles in the channel, in violation of State guidelines, regulations and statutes. Petitioners informed Respondent of the lack of ownership and violation of standards relating to the high-ground area in or about July, 1991. Thereafter, the WRC did not reconsider the Petitioners' permit applicant.
9. The Petitioners' proposal is for the excavation of an access channel to an existing basin. The navigation/access channel would require the excavation of 12,500 square feet of wooded swamp wetlands. The Petitioners' permit application proposes a one-to-one mitigation. Furthermore, once dredged, the area of the navigation channel will change from a wooded swamp wetland to that of a open water wetland, and the impact will measure to be 0.36 acres. Within the basin approximately fifteen slips will be provided for off-water property owners within this subdivision of Olde Towne. Another three slips will be established west of Harbour Island Drive, where maintenance excavation and bulk heading is proposed. The proposed marina would be a multi-segment marina. Waters of the adjacent Trent River are classified as "SB-SW-NSW" by the North Carolina Division of Environmental Management. The Trent River is designated as joint waters. The proposal involves the excavation of a 300 feet long by 50 feet wide by 6 feet deep channel through a segment of a wooded swamp wetlands. This channel would displace approximately 4,500 cubic yards of fill material. The excavation will be done by hydraulic dredge with the slurry being pumped to a diked disposal area located on Lots 59, 107, and 108, as depicted in figure 8 of the Petitioners' permit application. This spoil area is expected to contain this material with sufficient settling area, as the water level will be controlled by flashboard riser, emptying into the existing basin. When this procedure is completed, operations will be shut down for the spoil to dewater and be removed to a secondary disposal area(s) in uplands. The average of one foot of material will be removed from the bottom across this basin in order to obtain uniform, tapering depths back to the Olde Towne canal. Another 250 square feet of 404-Type wetlands will be removed, along with a small area of uplands, in order to reduce nooks and crannies that may be a problem to water circulation.
10. The site of the proposed marina basin is within estuarine water areas of environmental concern (AEC).
11. Olde Towne Lakes and Trent River are navigable waters.
12. The unconnected pond in its current state is of superior water quality, in terms of dissolved oxygen, than either the Olde Towne Lakes or Trent River.
13. The waters of the Olde Towne Lakes and unconnected pond in their current states do not violate any water quality standards. The lone exception to this is the water quality standard of total dissolved

gases (TDG). However, this violation of super-saturation exists in both the Olde Towne Lakes as well as the unconnected pond, and at the surface levels only. At the time it recommended denial of the permit, Respondent was unaware that this violation existed in both bodies.

14. There are no lunar tides in the geographical area of this project. Wind tides, however, do exist. Generally, these tides are only of a few inches, but some wind tides have been known to cause elevations to change by at least three feet. Such an increase in elevation would cause mixing between the two bodies of water, and in fact mixing does occur.
15. Petitioners' mitigation plan, in that it cannot avoid the impact, minimizes the impact and provides mitigation of impact.
16. The use classification of the Olde Towne Lakes and unconnected pond in their current state and in their state if eventually connected would be "C-NSW."
17. There have never been any known or recorded fish kills or algal blooms in the seventeen year history of the Olde Towne Lakes.
18. The proposed marina will permit the docking of boats in this area for residents of the subdivision who do not have water-access. No services whatsoever will be provided at this marina, which will follow a "closed head" policy.
19. In its current state, there is no circulation in the unopened pond. Connecting the unopened pond to the Olde Towne Lakes would increase circulation and flushing in the pond.
20. Respondent reviewed Petitioners' application under the mistaken belief that a 401 certification was required.
21. The proposed project is a water dependent use.
22. No coastal wetlands will be involved in this project.
23. Respondent ran a computer program to model potential impacts on water quality. The computer model run by Mr. Alan Klimeck of the DEM was extremely dependent on lunar tidal action. There is no lunar tidal action in this geographical area; therefore, the computer program consistently predicted lower dissolved oxygen levels in the basin than what were actually read during sampling, although no sampling ever indicated a violation of any standard.
24. During the processing of the permit application, several personnel of the Respondent, at least partially, based their decision on the alleged similarity of this project to that of a separate project in 1986. However, this project greatly differs from the 1986 project in that the excavation of 404-type wetlands has been reduced by 92%, filling of 404-type wetlands in this application are not proposed, the excavated impacts to 404-type wetlands are being mitigated at a one-to-one ratio, this project is water dependent, and the ambient water quality data indicates the water quality of the unconnected pond in its current condition is at an acceptable level, and is expected to improve upon opening the pond.
25. Respondent's witness, Preston Pate, indicated that on an average, CAMA Permit evaluations require eleven days in addition to the original 75 days allowed under the statute. Further, Respondent extended the time for its review of this project for 75 additional days without stating or showing exceptional circumstances. In an extension letter sent to Petitioners on June 26, 1991, Respondent used general or form language. Also, DEM had been aware of the matters in question since considering the 1986 application and probably even since a prior permit in the late 1970s.
26. In their petition requesting a contested case hearing, Petitioners allege that the Respondent deprived

them of property and substantially prejudiced their rights and in so doing acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, and failed to act as required by law or rule.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Respondent erroneously failed to consider the Petitioners' mitigation plan upon the erroneous belief that the Petitioners could avoid the impact.
2. The use classification of the unconnected pond and Olde Towne Lakes will not change upon connection, and therefore there is no violation of the state antidegradation policy.
3. Prior to this hearing, Respondent failed to reconsider relevant portions of the Petitioners' permit application once it was revealed that some critical underlying bases for recommendation of denial was incorrect and in error. Such failure to reevaluate said permit was unwarranted and erroneous. Further, Respondent based its recommendation of denial on other erroneous and/or irrelevant conclusions.
4. The connection of the unconnected pond with the Olde Towne Lakes and Trent River will not cause adverse water circulation problems, nor violate any water quality standards.
5. Respondent did not show any exceptional circumstances requiring said permit application to be extended past the initial 75 days, as required by G.S. 113A-122(c).
6. Connecting the unconnected pond to the Trent River and Olde Town Lakes will make the unconnected pond a public water and open it to the full public use, thereby increasing the public trust waters of the State.
7. The Respondent's denial of the permit application is an unreasonable and illegal interference with the rights of the Petitioners in violation of the laws and regulations of the State of North Carolina.
8. Respondent has not carried its burden of persuading the undersigned with substantial evidence that it acted properly in refusing to issue Petitioners' permit. I have not been convinced that Petitioners' proposed activity will violate rules, regulations or laws of the State of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the CAMA Major Development/Dredge and Fill Permit be issued to the Petitioner.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Coastal Resources Commission.

This the 16th day of September, 1992.

Fred G. Morrison Jr.
Senior Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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3	Auditor	Barber Examiners	6
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